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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1959~~ 1960

No. ~~541~~ 14

B. T. SHELTON, ET AL., APPELLANTS,

vs.

EVERETT TUCKER, JR.,
PRESIDENT, ETC., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

FILED NOVEMBER 23, 1959
PROBABLE JURISDICTION NOTED JANUARY 25, 1960

IN THE SUPREME COURT OF THE UNITED STATES

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IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

Civil Action, File Number 3708

B. T. SHELTON, for himself and others similarly situated, Plaintiffs,

—vs.—

ED. I. MCKINLEY, JR., CHAIRMAN, EVERETT TUCKER, JR., BEN D. ROWLAND, RUSSELL H. MATSON, JR., ROBERT W. LASTER and TED L. LAMB, as Members of the Little Rock Special School District; LITTLE ROCK SPECIAL SCHOOL DISTRICT; TERRELL E. POWELL, as Superintendent of the Little Rock Special School District; BRUCE BENNETT, Attorney General of the State of Arkansas and FRANK HOLT, Prosecuting Attorney of the Sixth Judicial District, Pulaski County, Arkansas, Defendants.

COMPLAINT—Filed April 21, 1959

Plaintiff, for his complaint herein, respectfully alleges:

For His First Cause of Action

I. Jurisdiction

1. The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1331. The matter in controversy herein exceeds the sum or value of $10,000, exclusive of interest and costs, and the action arises under the Constitution and laws of the United States, to wit: the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution; Article 1, Section 10, Clause 1 of the United States Constitution; and Title 42, United States Code, Sections 1981, 1983, 1985 and 1986.

2. The jurisdiction of this Court is also invoked under Title 28, United States Code, Section 1343, sub-paragraphs (3) and (4). This action is authorized by Title 42, United States Code, Section 1983, plaintiff being deprived, under color of statute, regulation and usage of the State of Arkansas and its instrumentalities, of rights, privileges and immunities secured by the Constitution and laws of the United States, to wit: rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the [fol. 5] United States Constitution; Article 1, Section 10, Clause 1 of the United States Constitution; and Title 42, United States Code, Sections 1981, 1983, 1985 and 1986.

3. The jurisdiction of this Court is also invoked pursuant to Title 28, United States Code, Sections 2281-2284, this being an action for an injunction against the enforcement of a statute of the State of Arkansas, to wit: Act 10, Second Extraordinary Session of the Legislature of the State of Arkansas of 1958.

4. The jurisdiction of this Court is also invoked pursuant to Title 28, United States Code, Sections 2201 and 2202, this being a proceeding for a Declaratory Judgment. All of the parties to this controversy are citizens of the United States and of the State of Arkansas, domiciled in Pulaski County, Arkansas and within territorial limits of the jurisdiction of this honorable Court.

II. The Plaintiff

5.(a) Plaintiff, B. T. Shelton is a resident of the State of Arkansas, and a citizen of the United States. From September, 1934, until the present time, he has been employed as a teacher in the free public schools of Little Rock, Arkansas. He is now employed by the defendant Little Rock Special School District, assigned to the Horace Mann High School and Dunbar Junior High School. He has performed and is performing his work in a satisfactory manner.

5.(b) Plaintiff brings this action in his own behalf and in behalf of all other persons, who are in a similar situation

because of their employment; that they, and each of them, are members of a class of persons whose constitutional rights are being invaded; that the members of the class of persons that he represents are so numerous as to make it impracticable to bring them all before this Court; that he, as a member of the class, can and will adequately and fairly represent all of the members of the class; that the character of the rights sought to be enforced and protected for the class in several, and that there is a common question of law and fact affecting the several rights of all the class, and common relief pursuant to Rule 23(a)(3), Federal Rules of Civil Procedure.

[fol. 6] III. The Defendants

6. The defendant, Little Rock Special School District, is a body corporate with power to sue and be sued in its corporate name and capacity: it is here sued in its corporate name and capacity.

7. The defendant, Little Rock Special School District, a corporation, is an administrative agency and an instrumentality of the State exercising functions and performing duties under the general education laws of the State of Arkansas.

8. The Board of Directors of the Little Rock Special School District, sometimes referred to as the Board of Education of the Little Rock Special School District, as created by act of the General Assembly of the State of Arkansas, is the governing body of the Little Rock Special School District, and is invested by the General Assembly with power and authority to make and enforce rules and regulations for the management and control of the public free schools within the said school district.

9. The defendants, Ed. I. McKinley, Jr., Everett Tucker, Jr., Ben D. Rowland, Russell H. Matson, Jr., Robert W. Laster and Ted L. Lamb, are the duly designated and qualified members of the Board of Directors of the Little Rock Special School District; they, and each of them, are citizens

of the United States and of the State of Arkansas, domiciled in Pulaski County, Arkansas, and within the jurisdiction of this Court; they, and each of them, are agents and administrative officers of the State of Arkansas and hold office and perform official duties and functions under the general education laws of the State of Arkansas; they, and each of them, are sued in their respective official capacities.

10. Defendant, Terrell E. Powell, is the duly appointed and qualified Superintendent of the Little Rock Special School District; is a citizen of the United States and of the State of Arkansas, domiciled in Pulaski County, Arkansas, and within the jurisdiction of this Court; is an agent and administrative officer of the State of Arkansas; is the agent, employee and servant of the Directors of the Little Rock Special School District, a corporation, and holds office and [fol. 7] performs official duties and functions pursuant to the general laws of the State.

11. That the Defendant, Bruce Bennett is the duly elected and qualified Attorney General of the State of Arkansas and the Defendant, Frank Holt, is the duly elected and qualified Prosecuting Attorney of the Sixth Judicial District of Pulaski County, Arkansas, and are being sued in their official capacities as under the Statutes made and provided.

IV. Act 10, Second Extraordinary Session of 1958

12. At the Second Extraordinary Session, 1958 of the General Assembly of Arkansas, there was enacted Act 10, which Act was approved by Governor Orval Faubus, Governor of the State of Arkansas, on September 12, 1958, and became part of the general laws of Arkansas on that date. A true and correct copy of said Act is annexed hereto and made a part hereof as Exhibit A to this complaint.

13. The said Act No. 10, purported to provide, among other things, that no superintendent, principal, or teacher can be employed by any school district operating a school until, as a condition precedent to such employment, such teacher shall have filed with the governing authority of

such school district, an affidavit as to the names and addresses of all incorporated and/or unincorporated associations and organizations of which such teacher is or within the past five years has been a member, or to which such teacher is presently paying, or within the past five years has paid regular dues or regular contributions.

14. On or about April 3, 1959, and in pursuance to the aforesaid Act No. 10, defendant, Terrell E. Powell caused to be distributed to the certificated teachers of the free public schools of Little Rock, Arkansas, including plaintiff, a memorandum dated April 3, 1959, a true and correct copy of which is annexed hereto and made part hereof as Exhibit B. The said memorandum stated in substance, that the Little Rock School Board would not issue new contracts of employment for the 1959-1960 school year to certified personnel of the Little Rock Special School District who failed [fol. 8] to execute and deliver the affidavits purportedly required by the aforesaid Act No. 10. Attached to said memorandum was a form of said affidavit. The memorandum further requested that said form of affidavit be executed and filed by teachers with the principals of their respective schools by 11:00 A.M., April 13, 1959.

15. The Plaintiff, B. T. Shelton, has declined to furnish the information purportedly required by Act 10, by the aforesaid memorandum, and by the form of affidavit furnished with said memorandum. Instead, Plaintiff has filed with his school principal, statement that he declines to furnish such information for the reason that such matters are constitutionally beyond the competence of the State of Arkansas to inquire into, and that the purported imposition of the requirement that such information be furnished, as a condition of employment infringed upon his constitutional rights, freely to associate with others in the exercise of their privileges of free speech, free press, and free assembly, and to petition for redress of grievances under the Fourteenth Amendment to the Constitution of the United States.

16. The custom and usage of the Little Rock School Board is, and for many years has been, to enter into con-

tracts with teachers for periods of a single school year, which year begins in the Fall of each year and ends in the Spring of the following year. By said custom and usage, the Little Rock School Board offers to teachers currently in its employ, contracts of employment for the ensuing school year in May of each year.

17. Pursuant to the aforesaid Act No. 10, the defendants have, and each of them, has threatened to refuse, and, upon information and belief, unless restrained by order of this Court will refuse, to offer to certificated teachers currently employed by the Little Rock Special School District, including plaintiff, contracts of employment for the 1959-1960 school year, and for ensuing school years, if said teachers have failed to furnish the aforesaid affidavit purportedly required by said Act 10 and the aforesaid memorandum of April 3, 1959, such refusal to be solely on the ground that said Act 10 prohibits their employment as teachers.

[fol. 9] 18. Plaintiff desires to continue to teach in the free public schools of Little Rock, Arkansas, and desires to enter into a contract of employment as teacher with the Little Rock Special School District for the school year 1959-1960, but will be prevented from doing so, and will be deprived of his customary livelihood, unless the acts described in the preceding paragraphs are enjoined by order of this Court.

19. The aforesaid information which said Act 10 and said memorandum of April 3, 1959, purportedly requires as a condition of employment are not appropriate or relevant to the qualifications or suitability for employment of those who apply for employment as teachers, under any standard which the State of Arkansas may impose consistent with the Constitution of the United States; the purpose of said Act 10 and of said memorandum is not to obtain information appropriate or relevant under any such standard.

20. The said Act 10, on its face, and as it is sought to be applied by the defendants to the plaintiff in this action,

in requiring the furnishing of the aforesaid information as a condition of his employment as teacher by the State of Arkansas, or its instrumentalities, is unconstitutional under the Fourteenth Amendment of the United States, in that it deprives him of liberty and property without due process of law, denies him the equal protection of the laws, infringes on his rights of freedom of speech, freedom of press, freedom of assembly and association, and to petition for redress of grievances, and denies him privileges and immunities of a citizen of the United States.

21. Act 10 is unconstitutional under the Fourteenth Amendment to the Constitution of the United States, in that the purposes and effects of said act, on its face, and as applied by the defendants, in requiring the furnishing of the information above-described as a condition of employment as a teacher, are to prevent or inhibit teachers and others, including plaintiff, from exercising rights guaranteed them under the Fourteenth Amendment to the Constitution of the United States, to wit, the rights of free [fol. 10] speech, free press, freedom of assembly, and to petition for redress of grievances.

22. The acts complained of will occur and continue to occur unless enjoined by order of this Court.

23. Plaintiff is threatened with substantial and irreparable injury and harm, in his liberties and in his property, and has no adequate remedy at law.

As and For A Second Cause of Action

I. Jurisdiction

24. The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1331. The matter in controversy herein exceeds the sum or value of $10,000, exclusive of interest and costs, and the action arises under the Constitution and laws of the United States, to wit: the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution; Article 1,

Section 10, Clause 1 of the United States Constitution; and Title 42, United States Code, Sections 1981, 1983, 1985 and 1986.

25. The jurisdiction of this Court is also invoked under Title 28, United States Code, Section 1343, sub-paragraphs (3) and (4). This action is authorized by Title 42, United States Code, Section 1983, plaintiff being deprived under color of statute, regulation and usage of the State of Arkansas and its instrumentalities, of rights, privileges and immunities secured by the Constitution and laws of the United States, to wit: the rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution; Article 1, Section 10, Clause 1 of the United States Constitution; and Title 42, United States Code, Sections 1981, 1983, 1985 and 1986.

26. The jurisdiction of this Court is also invoked pursuant to Title 28, United States Code, Sections 2201 and 2202, this being a proceeding for a Declaratory Judgment. All of the parties to this controversy are citizens of the United States, and of the State of Arkansas, domiciled in Pulaski County, Arkansas and within territorial limits of the jurisdiction of this honorable Court.

[fol. 11] II. The Plaintiff

27. Plaintiff, B. T. Shelton, is a resident of the State of Arkansas, and a citizen of the United States. From September, 1934, until the present time, he has been employed as a teacher in the free public schools of Little Rock, Arkansas. He is now employed by the defendant Little Rock Special School District, assigned to the Horace Mann High School and the Dunbar Junior High School. He has performed and is performing his work in a satisfactory manner.

III. The Defendants

28. The defendants, Little Rock Special School District, is a body corporate with power to sue and be sued in its corporate name and capacity: it is here sued in its corporate name and capacity.

29. The Defendant, Little Rock Special School District, a corporation, is an administrative agency and an instrumentality of the State exercising functions and performing duties under the general education laws of the State of Arkansas.

30. The Board of Directors of the Little Rock Special School District, sometimes referred to as the Board of Education of the Little Rock Special School District, as created by act of the General Assembly of the State of Arkansas is the governing body of the Little Rock Special School District and is invested by the General Assembly with power and authority to make and enforce rules and regulations for management and control of the public free schools within the said school district.

31. The defendants, Ed. I. McKinley, Jr., Everett Tucker, Jr., Ben D. Rowland, Russell H. Matson, Jr., Robert W. Laster and Ted L. Lamb, are the duly designated and qualified members of the Board of Directors of the Little Rock Special School District; they, and each of them, are citizens of the United States and of the State of Arkansas, domiciled in Pulaski County, Arkansas, and within the jurisdiction of this Court; they, and each of them, are agents and administrative officers of the State of Arkansas and hold office and perform official duties and functions under the general edu- [fol. 12] cation laws of the State of Arkansas; they, and each of them, are sued in their respective official capacities.

32. Defendant, Terrell E. Powell, is the duly appointed and qualified Superintendent of the Little Rock Special School District; is a citizen of the United States, and of the State of Arkansas, domiciled in Pulaski County, Arkansas, and within the jurisdiction of this Court; is an agent and administrative officer of the State of Arkansas; is the agent, employee and servant of the directors of the Little Rock Special School District, a corporation, and holds office and performs official duties and functions pursuant to the general laws of the State.

33. That the Defendant, Bruce Bennett, is the duly elected and qualified Attorney General of the State of Arkansas and the Defendant, Frank Holt is the duly elected

and qualified Prosecuting Attorney of the Sixth Judicial District of Pulaski County, Arkansas and are being sued in their official capacities as under the Statutes made and provided.

V. Jurisdiction

34. The jurisdiction of this Court is also invoked pursuant to Title 28, United States Code, 2281-2284, this being an action for an injunction against the enforcement, operation and execution of statutes of the State of Arkansas, to wit: Act 10 of the Second Extraordinary Assembly of the State of Arkansas, 1958, and Act 115 of the 1959 Regular Session of the General Assembly of the State of Arkansas.

VI. Act 115, 1959 Regular Session of General Assembly

35. The National Association for the Advancement of Colored People (hereinafter styled "NAACP") is a non-profit membership corporation, organized under the laws of the State of New York. Its Certificate of Incorporation provides as its principal objects "voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States, to advance the interest of colored citizens, to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for the children, employment, according to their ability, and complete equality before the law.

[fol. 13] 36. Plaintiff, B. T. Shelton, is member of the NAACP, and became and has remained a member to promote the objects described in the preceding paragraphs and no others.

37. At the Regular Session of 1959 of the General Assembly of Arkansas, there was enacted Act 115, which Act was approved by the Governor, Orval Faubus, on February 24, 1959, and became law on that date. A true and correct copy of said Act is annexed hereto and made part hereof as Exhibit C.

38. Section 1 of Act 115, among other things, makes it unlawful for any member of the NAACP to be employed

by the State of Arkansas or any school district, county or any municipality thereof, and further provides that the said prohibition shall continue as long as membership in the NAACP is maintained, Section 4 of said Act provides that any person employing any individual contrary to the provisions of the said Act shall be subject to a fine of not more than one hundred dollars ($100) for each separate offense.

39. Non-membership in the NAACP, is purportedly required as a condition of employment of a teacher, is not appropriate or relevant to the qualifications or suitability for employment of those who apply for employment as teachers under any standard which the State of Arkansas may impose consistent with the Constitution of the United States, and the purpose of said Act 115 is to impose a condition of employment not appropriate or relevant under any such standard.

40. Section 1 of Act 115, on its face, and as it is sought to be applied to plaintiff, is unconstitutional under the Fourteenth Amendment of the Constitution of the United States, in that it deprives him and others of liberty and property without due process of law, denies him and others the equal protection of the laws, infringes on his and their rights of freedom of speech, freedom of press, freedom of assembly and association, and to petition for redress of grievances, and denies him and others, their privileges and immunities of citizens of the United States: and said Section further is unconstitutional as a bill of attainder under [fol. 14] Article I, Section 10, Clause 1 of the United States Constitution.

41. The combined effect of the aforesaid Act 10, requiring the disclosure by affidavit of any current membership in the NAACP, and Act 115, prohibiting employment as a teacher in any public school of a member of the NAACP, is to require any member of the NAACP to disclose such membership, as a condition of employment, and, upon such disclosure, to deny employment to such member, which defendants threaten to apply against plaintiff and others,

is unconstitutional on its face in that its purposes and effects are to prevent and discourage teachers and others, including plaintiff, from exercising rights of free speech, free press, freedom of assembly and association, and to petition for redress of grievances as protected by the Fourteenth Amendment to the Constitution of the United States.

Wherefore, plaintiff respectfully prays the Court that, as may appear proper and convenient, it advance this action on the docket and order a speedy hearing thereof, and

1. That the Court notify the Chief Judge of the Circuit of the filing of this complaint, so that he may designate two other Judges to constitute a statutory Three-Judge Court, as provided for in Title 28, United States Code, Sections 2281-2284, inclusive.

2. That the Court enter preliminary and final injunctions restraining defendants from the enforcement, operation or execution of Act 10, Second Extraordinary Session of 1958 of the General Assembly of the State of Arkansas, and of Act 115 of the Regular 1959 Session of the General Assembly of the State of Arkansas.

3. That the Court enter interlocutory and permanent injunction restraining the defendants and each of them from refusing to employ or offering employment to plaintiff by reason of his failure to execute and file the affidavit purportedly required by the aforesaid Act 10.

4. That the Court enter interlocutory and permanent injunctions restraining the defendants from continuing to [fol. 15] inquire of plaintiff as to names or addresses of all the organizations and associations of which he is now or has been a member, or to which he now gives; or has given money and support.

5. That the Court enter interlocutory and permanent injunctions restraining the defendants from refusing to employ or offer employment to plaintiff by reason of his becoming, being or remaining a member of the National Association for the Advancement of Colored People.

6. That the Court adjudge, declare and decree the rights and legal obligations and relations of the parties.

7. That the Court grant such other or different relief as shall be meet and just in the premises.

Respectfully submitted,

J. R. Booker, Harold B. Anderson, Christopher C. Mercer, Thad D. Williams, Attorneys for Plaintiff.

Verification (omitted in printing).

[fol. 16] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

Civil Action No. 3708

B. T. SHELTON, for himself, and others similarly situated, Plaintiffs,

—vs.—

ED. I. MCKINLEY, JR., CHAIRMAN, EVERETT TUCKER, JR., BEN D. ROWLAND, RUSSELL H. MATSON, JR., ROBERT W. LASTER and TED L. LAMB, as Members of the Little Rock Special School District; LITTLE ROCK SPECIAL SCHOOL DISTRICT; TERRELL E. POWELL, as Superintendent of the Little Rock Special School District; BRUCE BENNETT, Attorney General of the State of Arkansas and FRANK HOLT, Prosecuting Attorney of the Sixth Judicial District, Pulaski County, Arkansas, Defendants.

ORDER CONVENING THREE-JUDGE COURT—April 27, 1959

The above named plaintiffs having filed suit which is now pending in the above entitled court, seeking temporary and permanent injunction against the defendants in said suit,

enjoining, suspending and restraining said defendants from enforcing or instituting proceedings to enforce certain Acts of the Legislature of the State of Arkansas, on the grounds, among others, that said statutes are violative of certain provisions of the Constitution of the United States; and said application for temporary and permanent injunction having been presented to the Honorable J. Smith Henley, United States District Judge for the Eastern District of Arkansas, and said Judge having notified the Chief Judge of the United States Court of Appeals for the Eighth Circuit thereof;

It Is Now Here Ordered that Honorable John B. Sanborn, United States Circuit Judge, and Honorable John E. Miller, United States District Judge for the Western District of Arkansas, be and they hereby are designated to sit with the above named Honorable J. Smith Henley, United States District Judge for the Eastern District of Arkansas, to hear and determine said action and proceeding.

Dated this 27th day of April, A. D. 1959.

Archibald K. Gardner, Chief Judge, United States Court of Appeals, for the Eighth Circuit.

[fol. 17] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

Civil Action, File Number 3708

B. T. SHELTON, for himself and others similarly situated; ARKANSAS TEACHERS ASSOCIATION, on its own behalf, and on behalf of its members; T. W. COGGS, as Executive Secretary of the ARKANSAS TEACHERS ASSOCIATION, Plaintiffs,

vs.

ED I. MCKINLEY, JR., CHAIRMAN, EVERETT TUCKER, JR., BEN D. ROWLAND, RUSSELL H. MATSON, JR., ROBERT W. LASTER and TED L. LAMB, as Members of the Little Rock Special School District; TERRELL E. POWELL, as Superintendent of the Little Rock Special School District; RALPH MITCHELL, JR., J. C. LANGLEY, HARVEY MCGEORGE, JOE W. CLEMENT, (Mrs.) S. A. STRINGER and PAUL YOUNG, as Members of the Pine Bluff Special School District; PINE BLUFF SPECIAL SCHOOL DISTRICT; DR. JOHN A. TRICE, as Superintendent of the PINE BLUFF SPECIAL SCHOOL DISTRICT; FARRIS E. MADISON, C. D. FRANKS, J. F. WAHL, (Mrs.) EDNA DOUGLAS, WENDELL D. LEE, C. E. LARRISON, and HUGH KINCAID, as Members of the Board of Trustees of the AGRICULTURAL, MECHANICAL & NORMAL COLLEGE for Negroes; BOARD OF TRUSTEES OF THE AGRICULTURAL, MECHANICAL & NORMAL COLLEGE FOR NEGROES; LAWRENCE A. DAVIS, as President of the Agricultural, Mechanical & Normal College for Negroes; BRUCE BENNETT, Attorney General of the State of Arkansas, and FRANK HOLT, Prosecuting Attorney of the Sixth Judicial District, Pulaski County, Arkansas, Defendants.

AMENDED COMPLAINT—Filed May 2, 1959

Plaintiffs, for their complaint herein, respectfully allege:

I. Jurisdiction

1. The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1331. The matter in controversy herein exceeds the sum or value of $10,000, exclusive of interest and costs, and the action arises under the Constitution and laws of the United States, to-wit: the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution; Article 1, Section 10, Clause 1 of the United States Constitution; and Title 42, United States Code, Sections 1981, 1983, 1985 and 1986.

2. The jurisdiction of this Court is also invoked under Title 28, United States Code, Section 1343, sub-paragraphs (3) and (4). This action is authorized by Title 42, United States Code, Section 1983, plaintiffs being deprived, under [fol. 18] color of statute, regulation, and usage of the State of Arkansas and its instrumentalities, of rights, privileges and immunities secured by the Constitution and laws of the United States, to-wit: rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution; Article 1, Section 10, Clause 1 of the United States Constitution; and Title 42, United States Code, Sections 1981, 1983, 1985 and 1986.

3. The jurisdiction of this Court is also invoked pursuant to Title 28, United States Code, 2281-2284, this being an action for an injunction against the enforcement, operation and execution of statutes of the State of Arkansas, to-wit: Act 10 of the Second Extraordinary Assembly of the State of Arkansas, 1958, and Act 115 of the 1959 Regular Session of the General Assembly of the State of Arkansas.

4. The jurisdiction of this Court is also invoked pursuant to Title 28, United States Code, Sections 2201 and 2202, this being a proceeding for a Declaratory Judgment. All of the parties to this controversy are citizens of the United States and of the State of Arkansas, domiciled within the territorial limits of the jurisdiction of this Honorable Court.

II. Plaintiffs

5. Plaintiff, B. T. Shelton, is a resident of the State of Arkansas, and a citizen of the United States. From September, 1934, until the present time, he has been employed as a teacher in the free public schools of Little Rock, Arkansas. He is now employed by the defendant Little Rock Special School District, assigned to the Horace Mann High School and Dunbar Junior High School. He has performed and is performing his work in a satisfactory manner.

6. Plaintiff brings this action in his own behalf, and in behalf of all other persons who are in a similar situation because of their employment; that they, and each of them, are members of a class of persons whose constitutional rights are being invaded; that the members of the class of persons that he represents are so numerous as to make it impracticable to bring them all before this Court; that he, as a member of the class, can and will adequately and fairly represent all of the members of the class; that the character [fol. 19] of the rights sought to be enforced and protected for the class is several, and that there is a common question of law and fact affecting the several rights of all the class, and common relief pursuant to Rule 23(a)(3), Federal Rules of Civil Procedure.

7. Plaintiff, Arkansas Teachers Association (hereinafter called ATA) is a non-profit Arkansas corporation, incorporated under the laws of the State of Arkansas in 1951. Its membership consists of all Negro teachers, principals, superintendents, instructors and professors in the State of Arkansas, and one of its main purposes is to promote and protect the general welfare of its members.

8. Plaintiff, ATA, brings this action on its own behalf, and on behalf of its members who are currently employed as teachers, principals, superintendents, instructors and professors at schools in the State of Arkansas which are supported wholly or in part by public funds.

9. Plaintiff, T. W. Coggs, Executive Secretary of ATA, brings this action on behalf of the members of the ATA; that they, and each of them are members of a class whose

constitutional rights are being invaded; that the members of the class of persons that he represents are so numerous as to make it impracticable to bring them before this Court; and that he can and will adequately and fairly represent all members of the class pursuant to Rule 17(b), Federal Rule of Civil Procedure and Arkansas Statutes (1947) Sec. 27-809.

III. Defendants.

10. The defendants, Little Rock Special School District, Pine Bluff Special School District, and the Board of Trustees of the said Agricultural, Mechanical & Normal College for Negroes (hereinafter called A. M. & N. College), are bodies corporate with power to sue and be sued in their corporate names and capacities; that they are here being sued in their corporate names and capacities on their own behalf and as representing all School Districts in the State of Arkansas who are similarly situated, and who are so numerous as to make it impracticable to bring them all before the Court; that all members of the class are charged with the duty of enforcing Acts 10 and 115; that the Defen- [fol. 20] dants as members of the class can and will adequately and fairly represent all members of the class; and that there is a common question of law and fact affecting the several duties, rights and obligations of all members of the class pursuant to Rule 23(a)(3), Federal Rules of Civil Procedure.

11. The defendants, Little Rock Special School District, Pine Bluff Special School District, and the Board of Trustees of said A. M. & N. College, are corporations and administrative agencies, and instrumentalities of the State exercising functions and performing duties under the general education laws of the State of Arkansas.

12. The Board of Directors of the Little Rock Special School District, sometimes referred to as the Board of Education of the Little Rock Special School District, as created by Act of the General Assembly of the State of Arkansas, is the governing body of the Little Rock Special School District, and is invested by the General Assembly with power and authority to make and enforce rules and regulations for

the management and control of the public free schools within the said school district.

13. The defendants, Ed I. McKinley, Jr., Everett Tucker, Jr., Ben D. Rowland, Russell H. Matson, Jr., Robert W. Laster and Ted L. Lamb, are the duly designated and qualified members of the Board of Directors of the Little Rock Special School District; they, and each of them, are citizens of the United States and of the State of Arkansas, domiciled in Pulaski County, Arkansas, and within the jurisdiction of this Court; they, and each of them, are agents and administrative officers of the State of Arkansas and hold office and perform official duties and functions under the general education laws of the State of Arkansas; they, and each of them, are sued in their respective official capacities.

14. Defendant, Terrell E. Powell, is the duly appointed and qualified Superintendent of the Little Rock Special School District; is a citizen of the United States and of the State of Arkansas, domiciled in Pulaski County, Arkansas, and within the jurisdiction of this Court; is an agent and administrative officer of the State of Arkansas; is the agent, employee and servant of the Directors of the Little Rock [fol. 21] Special School District, a corporation, and holds office and performs official duties and functions pursuant to the general laws of the State.

15. The Board of Directors of the Pine Bluff Special School District, sometimes referred to as the Board of Education of the Pine Bluff Special School District, as created by Act of the General Assembly of the State of Arkansas, is the governing body of the Pine Bluff Special School District, and is invested by the General Assembly with power and authority to make and enforce rules and regulations for the management and control of the public free schools within the said school district.

16. The Board of Trustees of the A. M. & N. College is the governing body of the A. M. & N. College, and is invested by the General Assembly with power and authority to make and enforce rules and regulations for the management and control of the A. M. & N. College.

17. That the defendants, Ralph Mitchell, Jr., J. G. Langley, Harvey McGeorge, Joe W. Clement, Mrs. S. A. Stringer and Paul Young, are the duly designated and qualified members of the Board of Directors of the Pine Bluff Special School District; they, and each of them, are citizens of the United States and of the State of Arkansas, domiciled in Jefferson County, Arkansas, and within the jurisdiction of this Court; they, and each of them, are agents and administrative officers of the State of Arkansas and hold office and perform official duties and functions under the general education laws of the State of Arkansas; they, and each of them, are sued in their respective official capacities.

18. Defendant, Dr. John A. Trice, is the duly appointed and qualified Superintendent of the Pine Bluff Special School District; is a citizen of the United States and of the State of Arkansas, domiciled in Jefferson County, Arkansas, and within the jurisdiction of this Court; is an agent and administrative officer of the State of Arkansas; is the agent, employee and servant of the Directors of the Pine Bluff Special School District, a corporation, and holds office and performs official duties and functions pursuant to the general laws of the State.

19. That the Board of Trustees of the A. M. & N. College, the defendants Farris E. Madison, C. D. Franks, J. F. Wahl, [fol. 22] Mrs. Edna Douglas, Wendell D. Lee, C. E. Larrison, and Hugh Kincaid, are the duly designated and qualified members of the Board of Trustees of the A. M. & N. College, they, and each of them are citizens of the United States and State of Arkansas, domiciled in Arkansas and within the jurisdiction of this Court; they, and each of them are agents and administrative officers of the State of Arkansas and hold office and perform official duties and functions under the general education laws of the State of Arkansas; they, and each of them are sued in their respective official capacities.

20. Defendant, Lawrence A. Davis, is the duly appointed and qualified President of the A. M. & N. College; is a citizen of the United States and of the State of Arkansas, domiciled in Jefferson County, Arkansas, and within the

jurisdiction of this Court; is an agent and administrative officer of the State of Arkansas; is the agent, employee and servant of the Trustees of the A. M. & N. College, a corporation, and holds office and performs official duties and functions pursuant to the general laws of the State.

21. That the Defendant, Bruce Bennett, is the duly elected and qualified Attorney General of the State of Arkansas, and the Defendant, Frank Holt, is the duly elected and qualified Prosecuting Attorney of the Sixth Judicial District of Pulaski County, Arkansas, and are being sued in their official capacities as under the Statutes made and provided.

IV. Act 10, Second Extraordinary Session of 1958, First Cause of Action

22. At the Second Extraordinary Session, 1958 of the General Assembly of Arkansas, there was enacted Act 10, which Act was approved by Governor Orval Faubus, Governor of the State of Arkansas, on September 12, 1958, and became part of the general laws of Arkansas on that date.

23. The said Act 10, purported to provide, among other things, that no superintendent, principal, or teacher can be employed by any school district operating a school until, as a condition precedent to such employment, such teacher shall have filed with the governing authority of such school district, an affidavit as to the names and addresses of all [fol. 24] incorporated and/or unincorporated associations and organizations of which such teacher is or within the past five years has been a member, or to which such teacher is presently paying, or within the past five years has paid regular dues or regular contributions.

24. On or about April 3, 1959, and in pursuance to the aforesaid Act No. 10, defendant, Terrell E. Powell, caused to be distributed to the certificated teachers of the free public schools of Little Rock, Arkansas, including plaintiff, a memorandum dated April 3, 1959. The said memorandum stated in substance, that the Little Rock School Board would not issue new contracts of employment for the 1959-1960 school year to certified personnel of the Little Rock Special

School District who failed to execute and deliver the affidavits purportedly required by the aforesaid Act No. 10. Attached to said memorandum was a form of said affidavit. The memorandum further requested that said form of affidavit be executed and filed by teachers with the principals of their respective schools by 11:00 A. M., April 13, 1959.

25. The Plaintiff, B. T. Shelton, has declined to furnish the information purportedly required by Act 10, by the aforesaid memorandum, and by the form of affidavit furnished with said memorandum. Instead, Plaintiff has filed with his school principal, statement that he declines to furnish such information for the reason that such matters are constitutionally beyond the competence of the State of Arkansas to inquire into, and that the purported imposition of the requirement that such information be furnished, as a condition of employment infringed upon his constitutional rights, freely to associate with others in the exercise of their privileges of free speech, free press, and free assembly, and to petition for redress of grievances under the Fourteenth Amendment to the Constitution of the United States.

26. Plaintiffs, ATA and T. W. Coggs, Executive Secretary of the ATA, upon information and belief, allege that, pursuant to the aforesaid Act 10, the members of the ATA have filed the aforesaid purportedly required affidavits under duress or will be compelled to file the aforesaid purportedly required affidavits under duress.

27. That the custom and usage of all defendants, and for many years has been, to enter into contracts with teachers [fol. 25] for periods of a single school year, which year begins in the fall of each year and ends in the spring of the following year. By said customs and usages, the defendants offer to teachers currently in its employ, contracts of employment for the ensuing school year.

28. Pursuant to the aforesaid Act No. 10, the defendants have, and each of them, has threatened to refuse, and, upon information and belief, unless restrained by order of this Court will refuse to offer to certificated teachers currently

employed by the Defendants, including Plaintiff and members of the ATA, contracts of employment for the 1959-1960 school year, and for ensuing school years, if said teachers have failed to furnish the aforesaid affidavit purportedly required by said Act 10 and the aforesaid memorandum of April 3, 1959, such refusal to be solely on the ground that said Act 10 prohibits their employment as teachers.

29. Upon information and belief, plaintiffs, ATA and T. W. Coggs, Executive Secretary of the ATA, allege that members of the ATA, who are currently employed as teachers by the defendants, desire to continue to teach in the school where they are now employed, and desire to enter into contracts of employment as teachers with their respective school districts.

30. The aforesaid information which said Act 10 purportedly requires as a condition of employment is not appropriate or relevant to the qualifications or suitability for employment of those who apply for employment as teachers, under any standard which the State of Arkansas may impose consistent with the Constitution of the United States; the purpose of said Act 10 is not to obtain information appropriate or relevant under any such standard.

31. That aforesaid Act 10 as it is sought to be applied by the Defendants to the plaintiff, B. T. Shelton, and members of the ATA, who are currently employed in Arkansas as teachers, principals, superintendents, instructors and professors, is unconstitutional, and in violation of rights protected by the First and Fourteenth Amendments to the United States Constitution, in that it requires as a condition of employment, the listing of organizations that do not [fol. 26] advocate the overthrow of the Government by force and violence.

32. The said Act 10, on its face, and as it is sought to be applied by the defendants to the plaintiff, B. T. Shelton, and members of the ATA, in this action, in requiring the furnishing of the aforesaid information as a condition of employment as a teacher by the State of Arkansas, or its instrumentalities, is unconstitutional under the Fourteenth

Amendment to the Constitution of the United States, in that it deprives them of liberty and property without due process of law, denies them the equal protection of the laws, infringes upon their rights of freedom of speech, freedom of the press, freedom of assembly and association, and to petition for redress of grievances, and denies them privileges and immunities of citizens of the United States.

33. Act 10 is unconstitutional under the Fourteenth Amendment to the Constitution of the United States, in that the purposes and effects of said Act, on its face, and as applied by the defendants in requiring the furnishing of the information above described as a condition of employment as teachers, are to prevent or inhibit teachers and others, including plaintiff, B. T. Shelton, and members of the ATA from exercising rights guaranteed them under the Fourteenth Amendment to the Constitution of the United States, to-wit: the rights of free speech, free press, freedom of assembly, and to petition for redress of grievances.

34. Act 10 is unconstitutional under the First and Fourteenth Amendments to the Constitution of the United States, in that the purpose and effect of said Act as applied by the Defendants to the plaintiff, B. T. Shelton, and members of the ATA, who are currently employed in Arkansas as teachers, principals, superintendents, instructors, and professors at schools supported wholly or in part by public funds, in requiring such persons to list organizations that do not advocate the overthrow of the Government by force and violence.

35. The acts complained of will occur and continue to occur unless enjoined by order of this Court.

36. Plaintiff, B. T. Shelton and members of the ATA, are threatened with substantial and irreparable injury and harm, in their liberties and in their properties, and have no adequate remedy at law.

[fol. 27] V. Act 115, 1959 Regular Session of General Assembly, Second Cause of Action

37. At the Regular Session of 1959 of the General Assembly of Arkansas, there was enacted Act 115, which Act

was approved by the Governor, Orval Faubus, on February 24, 1959, and became law on that date.

38. Section 1 of Act 115, among other things, makes it unlawful for any member of the National Association for the Advancement of Colored People (hereinafter called NAACP) to be employed by the State of Arkansas or any school district, county, or any municipality thereof, and further provides that the said prohibition shall continue as long as membership in the NAACP is maintained; Section 4 of said Act provides that any person employing any individual contrary to the provisions of said Act shall be subject to a fine of not more than one hundred dollars ($100) for each separate offense.

39. Non-membership in the NAACP, is purportedly required as a condition of employment as a teacher, is not appropriate or relevant to the qualifications or suitability for employment of those who apply for employment as teachers under any standard which the State of Arkansas may impose consistent with the Constitution of the United States, and the purpose of said Act 115 is to impose a condition of employment not appropriate or relevant under any such standard.

40. Act 115 asserts, but Plaintiffs deny that the NAACP, through its program and leaders in the State of Arkansas, disturbed the peace and tranquility which has long existed between the white and Negro races, and has threatened the progress and increased understanding between Negroes and whites.

41. Act 115 asserts, but Plaintiffs deny that the NAACP exerts constant pressure on its members designed to be, and produce a constant state of turmoil between the races.

42. Act 115 asserts, but Plaintiffs deny that membership in the NAACP is wholly incompatible with peace, tranquility and progress that all citizens have a right to enjoy.

43. Act 115 asserts, but Plaintiffs deny that the NAACP is a captive of the International Communist Conspiracy.

44. That the NAACP is a non-profit New York corpora- [fol. 28] tion. It was incorporated under the laws of the State of New York in 1911.

45. That the NAACP's basic aims and purposes are to secure the elimination of all racial barriers which deprive Negro citizens of the privileges and benefits of equal citizenship rights in the United States. In its Articles of Incorporation its principal objectives are described as follows:

> . . . voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law.
>
> To ascertain and publish all facts bearing upon these subjects and to take any lawful action thereon; together with any kind and all things which may lawfully be done by a membership corporation organized under the laws of the State of New York for the further advancement of these objects.

46. That according to a resolution which has been adopted annually by the NAACP since 1950, communists are ineligible for membership in said organization.

47. That the NAACP is qualified to do business in the State of Arkansas. By virtue of its activities throughout the 48 years of its existence in its efforts to secure equal rights and equal opportunities for colored citizens in the United States, the NAACP has become regarded as the chief instrument through which colored citizens may act in their effort to remove the burdens and penalties imposed by restrictions based upon race and color.

48. Plaintiff, B. T. Shelton, is a member of the NAACP, and became and has remained a member to promote the objects described in the preceding paragraphs and no others.

49. Plaintiff, B. T. Shelton, alleges upon information and belief that many members of said ATA are members, or desire to become members of the NAACP.

50. Section 1 of Act 115, on its face, and as it is sought to be applied to plaintiff, B. T. Shelton, and members of the

ATA, is unconstitutional under the Fourteenth Amendment to the Constitution of the United States, in that it deprives them and others the equal protection of the laws, infringes on their rights of freedom of speech, freedom of press, freedom of assembly and association, and to petition for redress [fol. 29] of grievances, and denies them and others, their privileges and immunities of citizens of the United States; and said Section further is unconstitutional as a bill of attainder under Article I, Section 10, Clause 1 of the United States Constitution.

51. The combined effect of the aforesaid Act 10, requiring the disclosure by affidavit of any current membership in the NAACP, and Act 115, prohibiting employment as a teacher in any public school of a member of the NAACP, is to require any member of the NAACP to disclose such membership, as a condition of employment, and, upon such disclosure, to deny employment to such member, which defendants threaten to apply against plaintiff, B. T. Shelton, members of the ATA, and others, is unconstitutional on its face in that its purposes and effects are to prevent and discourage teachers and others, including Plaintiff, B. T. Shelton, and members of the ATA, from exercising rights of free speech, free press, freedom of assembly and Association, and to petition for redress of grievances as protected by the Fourteenth Amendment to the Constitution of the United States.

52. That members of said ATA, who are members of the NAACP, are innocent and without knowledge of any of the accusations denied in paragraphs 40, 41, 42 and 43 herein, and such persons became members to promote the principles set out herein in paragraph 45 herein.

53. That attached herewith and made a part of this amended complaint, as Exhibit A, is an affidavit.

Wherefore, Plaintiffs respectfully pray the Court that, as may appear proper and convenient, it advance this action on the docket and order a speedy hearing thereof, and

1. That the Court notify the Chief Judge of the Circuit Court of Appeals, so that he may designate two other

Judges to constitute a statutory Three-Judge Court, as provided for in Title 28, United States Code, Sections 2281-2284, inclusive.

2. That a member of the Court enter a temporary restraining order or stay, restraining defendants and each of them, until hearing and determination by the full Court, of the following:

[fol. 30] (a) from the enforcement, operation, or execution of aforesaid Acts 10, and 115; and

(b) from refusing to employ or offering employment to plaintiff by reason of his failure to execute and file the affidavit purportedly required by the aforesaid Act 10; and

(c) from continuing to inquire of plaintiff B. T. Shelton, and members of the ATA, as to names or addresses of all the organizations and associations of which they are now, or have been a member, or to which they now give, or have given money and support.

3. That the Court enter preliminary and final injunctions restraining defendants from the enforcement, operation, or execution of Act 10, Second Extraordinary Session of 1958 of the General Assembly of the State of Arkansas, and of Act 115 of the Regular 1959 Session of the General Assembly of the State of Arkansas.

4. That the Court enter an interlocutory and permanent injunction restraining the defendants and each of them from refusing to employ or offering employment to plaintiff, B. T. Shelton, and members of the ATA, by reason of their failure to execute and file the affidavit purportedly required by the aforesaid Act 10, or in the alternative, that all organizations, other than those that advocate the overthrow of the government by force, be excluded from the applications of Act 10, Second Extraordinary Session of 1958 of the General Assembly of the State of Arkansas.

5. That the Court enter interlocutory and permanent injunctions restraining the defendants from continuing to inquire of plaintiff, B. T. Shelton, and members of the ATA, as to names or addresses of all organizations and associa-

tions of which he is now, or has been a member, or to which he now gives, or has given money and support, or in the alternative, that all organizations, other than those that advocate the overthrow of the government by force, be excluded from the applications of Act 10, Second Extraordinary Session of 1958 of the General Assembly of the State of Arkansas.

6. That the Court enter interlocutory and permanent injunctions restraining the defendants from refusing to employ or offer employment to plaintiff, B. T. Shelton, and members of the ATA, by reason of their becoming, being, [fol. 31] or remaining members of the National Association for the Advancement of Colored People.

7. That all affidavits already filed, pursuant to Act 10 aforesaid, be cancelled and expunged.

8. That the Court adjudge, declare and decree the rights and legal obligations and relations of the parties.

9. That the Court grant such other or different relief as shall be meet and just in the premises.

Respectfully submitted,

J. R. Booker, Harold B. Anderson, Christopher C. Mercer, Thad D. Williams, Attorneys for Plaintiffs.

Verification (omitted in printing).

[fol. 32] Exhibit "A" to Amended Complaint

State of Arkansas)
County of Pulaski)

Affidavit

I, B. T. Shelton, being first duly sworn, do hereby depose and say:

1. That I am a resident of the State of Arkansas, and a citizen of the United States. From September, 1934, until the present time, I have been employed as a teacher in the free public schools of Little Rock, Arkansas. I am now empowered by the Little Rock Special School District, as-

signed to the Horace Mann High School and Dunbar Junior High School. I have performed, and am performing my work in a satisfactory manner.

2. That during the Second Extraordinary Session, 1958 of the General Assembly of Arkansas, there was enacted Act 10, which Act was approved by Governor Orval Faubus, Governor of the State of Arkansas, on September 12, 1958, and became part of the general laws of Arkansas on that date.

3. The said Act No. 10, purported to provide, among other things, that no superintendent, principal, or teacher, can be employed by any school district operating a school until, as a condition precedent to such employment, such teacher shall have filed with the governing authority of such school district, an affidavit as to the names and addresses of all incorporated and/or unincorporated associations and organizations of which such teacher is, or within the past five years has been a member, or to which such teacher is presently paying, or within the past five years has paid regular dues or regular contributions.

4. On or about April 3, 1959, and in pursuance to the aforesaid Act No. 10, defendant, TERRELL E. POWELL, caused to be distributed to me a memorandum dated April 3, 1959. The said memorandum stated in substance, that the LITTLE ROCK SCHOOL BOARD, would not issue new contracts of employment for the 1959-1960 school year to certified personnel of the LITTLE ROCK SPECIAL SCHOOL DISTRICT who failed to execute and deliver the affidavits purportedly required by the aforesaid Act No. 10. Attached to said memorandum was a form of said affidavit. The memorandum further requested that said form of affidavit be executed and filed [fol. 33] by teachers with the principals of their respective schools by 11:00 A.M., April 13, 1959.

5. That I declined to furnish the information purportedly required by Act 10, by the aforesaid memorandum, and by the form of affidavit furnished with said memorandum. Instead, I filed with my school principal, a statement to the effect that I declined to furnish such information for the reason that such matters are constitutionally beyond the competence of the State of Arkansas to inquire into, and

that the purported imposition of the requirement that such information be furnished, as a condition of employment, infringed upon my constitutional rights, freely to associate with others in the exercise of my privileges of free speech, free press, and free assembly, and to petition for redress of grievances under the Fourteenth Amendment to the Constitution of the United States.

6. I am not a member of any organization which advocates the overthrow of the government by force.

7. At the Regular Session of 1959 of the General Assembly of Arkansas, there was enacted Act 115, which Act was approved by the Governor, Orval Faubus, on February 24, 1959, and became law on that date.

8. Section 1 of Act 115, among other things, makes it unlawful for any member of the NAACP to be employed by the State of Arkansas or any school district, county or any municipality thereof, and further provides that the said prohibition shall continue as long as membership in the NAACP is maintained. Section 4 of said Act provides that any person employing any individual contrary to the provisions of the said Act shall be subject to a fine of not more than one hundred dollars ($100) for each separate offense.

9. That I am a member of the NAACP, and became and have remained a member to promote the objects described in paragraph 45 of the Amended Complaint, and I have never known of anything that would indicate that the NAACP is, or has ever been a captive of an International conspiracy.

WITNESS my hand and seal on this the ..... day of ....., 1959.

.....

SUBSCRIBED and sworn to before me this the ..... day of ....., 1959.

My Commission Expires:

.....

.....

NOTARY PUBLIC

[fol. 35] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

Civil Action, File Number 3703

B. T. SHELTON, for himself and others similarly situated; ARKANSAS TEACHERS ASSOCIATION, on its own behalf, and on behalf of its members; T. W. COGGS, as Executive Secretary of the ARKANSAS TEACHERS ASSOCIATION, Plaintiffs,

vs.

ED I. MCKINLEY, JR., CHAIRMAN, EVERETT TUCKER, JR., BEN D. ROWLAND, RUSSELL H. MATSON, JR., ROBERT W. LASTER and TED L. LAMB, as Members of the Little Rock Special School District; TERRELL E. POWELL, as Superintendent of the Little Rock Special School District; RALPH MITCHELL, JR., J. C. LANGLEY, HARVEY MCGEORGE, JOE W. CLEMENT, (Mrs.) S. A. STRINGER and PAUL YOUNG, as Members of the Pine Bluff Special School District; PINE BLUFF SPECIAL SCHOOL DISTRICT; DR. JOHN A. TRICE, as Superintendent of the PINE BLUFF SPECIAL SCHOOL DISTRICT; FARRIS E. MADISON, C. D. FRANKS, J. F. WAHL, (Mrs.) EDNA DOUGLAS, WENDELL D. LEE, C. E. LARRISON, and HUGH KINCAID, as Members of the Board of Trustees of the AGRICULTURAL, MECHANICAL & NORMAL COLLEGE for Negroes; BOARD OF TRUSTEES OF THE AGRICULTURAL, MECHANICAL & NORMAL COLLEGE FOR NEGROES; LAWRENCE A. DAVIS, as President of the Agricultural, Mechanical & Normal College for Negroes; BRUCE BENNETT, Attorney General of the State of Arkansas, and FRANK HOLT, Prosecuting Attorney of the Sixth Judicial District, Pulaski County, Arkansas, Defendants.

MOTION FOR PRELIMINARY INJUNCTION WITHOUT NOTICE—Filed May 4, 1959

Come now plaintiffs, B. T. Shelton, T. W. Coggs, and the Arkansas Teachers Association, and move the court for a

preliminary injunction in the above entitled cause, enjoining the defendants, Little Rock Special School District, Pine Bluff Special School District, Lawrence Davis, President of Arkansas Mechanical, & Normal College of Pine Bluff, Arkansas, and the Board of Trustees of Arkansas Mechanical & Normal College of Pine Bluff, Arkansas, and others similarly situated, from enforcement of, the attempt to enforce, or taking any action with reference to Act 10 of the 1958 Extraordinary Session, and Act 115 of the 1959 regular session, as passed by the Arkansas State Legisla-
[fol. 36] ture, and now part and parcel of the laws of Arkansas.

The grounds in support of this motion are as follows:

1. That statutes 10 and 115 are unconstitutional, in that, by their enforcement they constituted a denial of freedom of association, free speech, free press, and free assembly, and to petition for redress of grievances under the 14th Amendment to the Constitution of the United States.

2. But for Acts 10 and 115 aforesaid, the defendants would issue to the plaintiffs, B. T. Shelton, and others similarly situated in Little Rock and over the State of Arkansas, contracts for the ensuing school year.

Unless restrained the defendants will refuse to enter into a contract with the Plaintiff, B. T. Shelton, as it has for the past 25 years, because of Acts 10 and 115; and others similarly situated as B. T. Shelton stand to suffer the same denial and fate.

Immediate and irreparable injury, loss and damage will result to the plaintiffs by reason of the threatened action of the defendants, as more particularly appears in the verified complaint filed herein. The plaintiffs have no adequate remedy at law.

If this preliminary injunction be granted, the injury if any, to defendants herein, if final judgment be in their favor, will be inconsiderable, and will be adequately indemnified by bond.

B. T. Shelton, et al., By B. T. Shelton, Thad D. Williams, Christopher C. Mercer, Jr., Harold B. Anderson, J. R. Booker, Attorneys for Plaintiffs, By J. R. Booker, Address: Century Building, Little Rock, Arkansas.

[fol. 37] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

Civil Action, File Number 3708

B. T. SHELTON, for himself and others similarly situated; ARKANSAS TEACHERS ASSOCIATION, on its own behalf, and on behalf of its members; T. W. COGGS, as Executive Secretary of the ARKANSAS TEACHERS ASSOCIATION, Plaintiffs,

vs.

ED I. MCKINLEY, JR., CHAIRMAN, EVERETT TUCKER, JR., BEN D. ROWLAND, RUSSELL H. MATSON, JR., ROBERT W. LASTER and TED L. LAMB, as Members of the Little Rock Special School District; TERRELL E. POWELL, as Superintendent of the Little Rock Special School District; RALPH MITCHELL, JR., J. C. LANGLEY, HARVEY MCGEORGE, JOE W. CLEMENT, (Mrs.) S. A. STRINGER and PAUL YOUNG, as Members of the Pine Bluff Special School District; PINE BLUFF SPECIAL SCHOOL DISTRICT; DR. JOHN A. TRICE, as Superintendent of the PINE BLUFF SPECIAL SCHOOL DISTRICT; FARRIS E. MADISON, C. D. FRANKS, J. F. WAHL, (Mrs.) EDNA DOUGLAS, WENDELL D. LEE, C. E. LARRISON, and HUGH KINCAID, as Members of the Board of Trustees of the AGRICULTURAL, MECHANICAL & NORMAL COLLEGE for Negroes; BOARD OF TRUSTEES OF THE AGRICULTURAL, MECHANICAL & NORMAL COLLEGE FOR NEGROES; LAWRENCE A. DAVIS, as President of the Agricultural, Mechanical & Normal College for Negroes; BRUCE BENNETT, Attorney General of the State of Arkansas, and FRANK HOLT, Prosecuting Attorney of the Sixth Judicial District, Pulaski County, Arkansas, Defendants.

TEMPORARY RESTRAINING ORDER WITHOUT NOTICE—
May 4, 1959

Whereas, in the above named cause it has been made to appear by the verified amended complaint filed herein,

which was on this the 4th day of May, 1959, presented to the Honorable Judges John B. Sanborn, Judge of Circuit Court of Appeals, 8th Circuit, and John E. Miller, Judge of the United States District Court for the Western Division of Arkansas, heretofore assigned to consider this case, that a restraining order preliminary to hearing upon motion for preliminary injunction should issue, without notice because immediate and irreparable injury, loss or damage will result to the plaintiff before notice can be served and a hearing had thereon, in that the Little Rock Special School District and officers and members thereof have given notice of an official Board meeting to be held at 3 P.M., Monday, May 4th, 1959, for the purpose of approving the offering of contracts to the various teachers to be employed for the [fol. 38] 1959-1960 term, and will, unless this order is instantly granted, refuse to offer to B. T. Shelton, a contract for such period and such conditions will also likely prevail in the other School Districts and Boards similarly situated, within the State of Arkansas.

Notice and a hearing before entering a temporary restraining order should not be required because irreparable injury will be suffered by B. T. Shelton and others similarly situated and immediate loss and damage will ensue which cannot be repaired unless relief is immediately afforded.

Now, Therefore, on motion of the plaintiff, B. T. Shelton, for himself and others similarly situated; Arkansas Teachers Association, on its own behalf, and on behalf of its members; T. W. Coggs, as Executive Secretary of the Arkansas Teachers Association;

It Is Ordered, that the defendants Ed I. McKinley, Jr., Chairman; Everett Tucker, Jr., Ben D. Rowland, Russell H. Matson, Jr., Robert W. Laster and Ted L. Lamb, as Members of the Little Rock Special School District; Terrell E Powell, as Superintendent of the Little Rock Special School District; Ralph Mitchell, Jr., J. C. Langley, Harvey McGeorge, Joe W. Clement, (Mrs.) S. A. Stringer and Paul Young, as Members of the Pine Bluff Special School District; Pine Bluff Special School District; Farris E. Madison, C. D. Franks, J. F. Wahl, (Mrs.) Edna Douglas,

Wendell D. Lee, C. E. Larrison, and Hugh Kincaid, as Members of the Board of Trustees of the Agricultural, Mechanical & Normal College for Negroes; Board of Trustees of the Agricultural, Mechanical & Normal College for Negroes; Lawrence A. Davis, as President of the Agricultural, Mechanical & Normal College for Negroes and all other school boards of Arkansas similarly situated; Bruce Bennett, Attorney General of the State of Arkansas, and Frank Holt, Prosecuting Attorney of the Sixth Judicial District, Pulaski County, Arkansas, and each of them, their agents, successors, deputies, servants and employees, and all persons acting by, through, or under them or either of them, or by or through their order, be, and they are hereby restrained until May 14th, 1959, from enforcement or attempts to enforce Act 10 and Act 115 aforesaid.

[fol. 39] This temporary restraint is on condition that a bond be filed by plaintiff herein in the sum of $250.00, conditioned that the Petitioners shall pay all costs and damages that may be incurred or suffered by any party herein found wrongfully enjoined or restrained.

John B. Sanborn, John E. Miller, Judges.

Issued at 1 o'clock P.M.,
this 4th day of May, 1959.

[fol. 43] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

[Title omitted]

ORDER EXTENDING TEMPORARY RESTRAINING ORDER—
May 13, 1959

On this day there is presented to the undersigned the verified petition of the plaintiffs in this case for an order extending the temporary restraining order entered herein on May 4, 1959, by the Honorable John B. Sanborn, United

States Circuit Judge, and the Honorable John E. Miller, United States District Judge.

It appears to the undersigned that on May 4, 1959, the plaintiffs presented their application for a temporary restraining order to Judges Sanborn and Miller, above referred to, and that on said date the said Judges entered a temporary restraining order, restraining until May 14, 1959, the persons and bodies referred to therein for enforcing or attempting to enforce Act 10 and Act 115 of the Sixty-second General Assembly of the State of Arkansas.

It appears from the petition now under consideration that the plaintiffs are seeking to have said temporary restraining order extended for an additional period of ten days; and that the situation which moved Judges Sanborn and Miller to grant said order continues to exist.

It Is Therefore ordered that the defendants, and all of them, heretofore restrained and stayed in the order of May 4, 1959, be and are hereby restrained, stayed and enjoined from the enforcement or attempts to enforce or apply the provisions of Act 10 and Act 115 aforesaid for another period of ten (10) days dating from May 1959.

Dated May 13, 1959.

J. Smith Henley, United States District Judge.

[fol. 44]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

[Title omitted]

ANSWER OF LITTLE ROCK SPECIAL SCHOOL DISTRICT

Come the defendants, Ed I. McKinley, Jr., Everett Tucker, Jr., Ben D. Rowland, Russell H. Matson, Jr., Robert W. Laster and Ted L. Lamb, as members of the Little Rock Special School District, and Terrell E. Powell, Superintendent, hereinafter referred to as the "defendants", and for their answer to the amended complaint of the plaintiffs state:

1.

The defendants move to dismiss the amended complaint on the ground that it fails to state a claim upon which relief can be granted and on the ground that the Court has no jurisdiction.

2.

The defendants admit that B. T. Shelton is a resident of the State of Arkansas and that he has been employed as a teacher in the public schools of the Little Rock School District; that the Little Rock Special School District is a corporate entity under the laws of the State of Arkansas; that Terrell E. Powell is the duly appointed and qualified Superintendent of the Little Rock Special School District, and is a citizen of the United States and of the State of Arkansas, and is a resident of Pulaski County, Arkansas; and that the other individual defendants filing this answer are members of the Board of Directors of Little Rock Special School District, and that each of them is a citizen of the United States and of the State of Arkansas, and is a resident of Pulaski County, Arkansas. The defendants admit that at the Second Extraordinary Session of 1958 of the General Assembly of the State of Arkansas, there was enacted Act No. 10 which was approved by the Governor and which is now part of the general laws of the State of Arkansas. The defendants admit that pursuant to the provisions of said Act the defendant, Terrell E. Powell, caused to be distributed to teachers employed by the Little Rock Special School District, affidavits required by said Act No. 10 and an explanatory memorandum. The defendants admit that the plaintiff, B. T. Shelton, declined to execute and file said affidavit. The defendants admit that at the regular session of 1959 of the General Assembly of the State of Arkansas, there was enacted Act No. 115 which Act was approved by the Governor and is now part of the general laws of the State of Arkansas.

[Vol. 45] 3.

The defendants deny each allegation of the complaint not hereinabove specifically admitted.

4.

The defendants deny that this is a proper class action; that the plaintiffs are proper representatives of the alleged class asserted in the complaint; and that the defendants are proper representatives of the alleged class asserted in the complaint.

Wherefore, having fully answered, the defendants pray:

A.

That the complaint be dismissed with prejudice.

B.

That the defendants recover their costs herein expended.

C.

That this action be stayed pending a decision upon and interpretation of said Act No. 10 of 1958 and said Act No. 115 of 1959, by the courts of the State of Arkansas.

D.

That the defendants have all other relief to which they may be entitled.

Mehaffy, Smith & Williams, 11th Floor Boyle Building, Little Rock, Arkansas, By Herschel H. Friday, Jr., Robert V. Light, Attorneys for Above Named Defendants.

Certificate of Service (omitted in printing).

[fol. 53]

IN UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

[Title omitted]

ANSWER OF DEFENDANTS FARRIS E. MADISON, C. D. FRANKS J. F. WAHL, MRS. EDNA DOUGLAS, WENDELL D. LEE, HUGH KINCAID, C. E. LARRISON AND DR. LAWRENCE A. DAVIS

Come the defendants Farris E. Madison, C. D. Franks, J. F. Wahl, Mrs. Edna Douglas, Wendell D. Lee, Hugh Kincaid, and C. E. Larrison as members of the Board of Trustees of Agricultural, Mechanical & Normal College for Negroes, and Dr. Lawrence A. Davis, President of Agricultural Mechanical and Normal College for Negroes herein after referred to as the "defendants" and for their answer to the amended complaint of the plaintiffs state:

1.

These defendants move to dismiss the amended complaint of the plaintiffs on the ground that it fails to state a claim upon which relief can be granted insofar as these defendants are concerned and on the ground that the court has no jurisdiction.

2.

These defendants admit that Farris E. Madison, C. D. Franks, J. F. Wahl, Mrs. Edna Douglas, Wendell D. Lee, Hugh Kincaid and C. E. Larrison are the duly designated and qualified members of the Board of Trustees of Agricultural Mechanical & Normal College for Negroes, and that they are citizens of the United States and of the State of Arkansas. They admit that Dr. Lawrence A. Davis is the duly appointed and qualified President of Agricultural Mechanical and Normal College for Negroes, that he is a citizen of the United States and the State of Arkansas; and is domiciled in Jefferson County, Arkansas. These defendants admit that at the Second Extraordinary Session of 1958 of the General Assembly of the State of Arkansas,

there was enacted Act No. 10 which was approved by the Governor and which is now part of the general laws of the State of Arkansas. They further admit that at the regular session of the 1959 General Assembly of the State of Arkansas there was enacted Act No. 115 which Act was approved by the Governor of the State of Arkansas and is now part of the general laws of this state.

3.

[fol. 54] In reply to the allegations in paragraphs, 5, 6, 7, 8, 9, 12, 13, 14, 15, 17, 18, 24, 25, 26, 44, 45, 46 and 47 of the amended complaint of the plaintiffs, these defendants state that they do not have knowledge or information sufficient to form a belief as to the allegations contained in said amended complaint and for the purpose of placing the facts in issue they deny the allegations contained therein.

4.

These defendants deny each and every material allegation of the amended complaint not specifically admitted herein.

Wherefore, having fully answered, these defendants pray that the amended complaint be dismissed as to them with prejudice; that the Court instruct these defendants as to their further action with reference to the Acts in controversy; that this action be stayed pending a decision by the courts of the State of Arkansas upon and interpreting Act No. 10 of 1958 and Act No. 115 of 1959; and that these defendants recover their costs herein expended and have all other proper relief to which they may be entitled.

Coleman, Gantt & Ramsey, 1112 Simmons National Building, Pine Bluff, Arkansas. By: Louis L. Ramsey, Jr., E. Harley Cox, Jr., Attorneys for Above Named Defendants.

Certificate of Service (omitted in printing).

[fol. 55]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

[Title omitted]

ANSWER OF DEFENDANTS HARVEY W. MCGEORGE, JOE W. CLEMENT, JR., MRS. F. A. STRINGER, PAUL YOUNG AND DR. JOHN A. TRICE

Come the defendants Harvey W. McGeorge, Joe W. Clement, Jr., Mrs. F. A. Stringer and Paul Young as members of the Board of Directors of Pine Bluff Special School District, being Pine Bluff School District No. 3, and Dr. John A. Trice, Superintendent, hereinafter referred to as the "defendants" and for their answer to the amended complaint of the plaintiffs state:

1.

These defendants move to dismiss the amended complaint of the plaintiffs on the ground that it fails to state a claim upon which relief can be granted insofar as these defendants are concerned and on the ground that the court has no jurisdiction.

2.

These defendants admit that Harvey W. McGeorge, Joe W. Clement, Jr., Mrs. F. A. Stringer and Paul Young are the duly designated and qualified members of the Board of Directors of Pine Bluff Special School District, being Pine Bluff School District No. 3, and that they are citizens of the United States and of the State of Arkansas and are domiciled in Jefferson County, Arkansas. They admit that Dr. John A. Trice is the duly appointed and qualified Superintendent of Pine Bluff Special School District, being Pine Bluff School District No. 3, and that he is a citizen of the United States and of the State of Arkansas domiciled in Jefferson County, Arkansas. These defendants further admit that at the Second Extraordinary Session of 1958

of the General Assembly of the State of Arkansas, there was enacted Act No. 10 which was approved by the Governor and which is now part of the general laws of the State of Arkansas. They further admit that at the regular session of the 1959 General Assembly of the State of Arkansas there was enacted Act No. 115 which Act was approved by the Governor of the State of Arkansas and is now part of the general laws of this state.

3.

In reply to the allegations in paragraphs 5, 6, 7, 8, 9, 12, 13, 14, 19, 20, 21, 24, 25, 26, 44, 45, 46 and 47 of the amended complaint of the plaintiffs; these defendants state [fol. 56] that they do not have knowledge or information sufficient to form a belief as to the allegations contained in said amended complaint and for the purpose of placing the facts in issue they deny the allegations contained therein.

4.

These defendants deny each and every material allegation of the amended complaint not specifically admitted herein.

Wherefore, having fully answered, these defendants pray that the amended complaint be dismissed as to them with prejudice; that the court instruct these defendants as to their further action with reference to the Acts in controversy; that this action be stayed pending a decision by the courts of the State of Arkansas upon and interpreting Act No. 10 of 1958 and Act No. 115 of 1959; and that these defendants recover their costs herein expended and have all other proper relief to which they made (sic) be entitled.

Coleman, Gantt & Ramsey, 1113 Simmons National Building, Pine Bluff, Arkansas, By: Louis L. Ramsey, Jr., E. Harley Cox, Jr., Attorneys for Above Named Defendants.

Certificate of Service (omitted in printing).

[fol. 57]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

No. 3708

B. T. SHELTON, for himself and others similarly situated, Plaintiffs,

vs.

ED I. MCKINLEY, JR., CHAIRMAN; EVERETT TUCKER, JR., BEN D. ROWLAND, RUSSELL H. MATSON, JR., ROBERT W. LASTER and TED L. LAMB, as Members of the Little Rock Special School District; LITTLE ROCK SPECIAL SCHOOL DISTRICT; TERRELL E. POWELL, as Superintendent of the Little Rock Special School District; BRUCE BENNETT, Attorney General of the State of Arkansas, and FRANK HOLT, Prosecuting Attorney of the Sixth Judicial District, Pulaski County, Arkansas, Defendants.

Transcript of Proceedings of May 25, 1959

Be It Remembered that heretofore, on the 25th day of May, 1959, the above-captioned cause came on for hearing in said Court at the hour of 10:00 o'clock, a.m., before Honorable John B. Sanborn, United States Circuit Judge, Honorable John E. Miller, United States District Judge and Honorable J. Smith Henley, United States District Judge, sitting at Little Rock, Arkansas.

[fol. 58] APPEARANCES

The plaintiffs were represented by their attorneys, Mr. J. R. Booker, Mr. Thad D. Williams, Mr. H. B. Anderson, and Mr. C. C. Mercer.

The defendants were represented by Mr. Herschel Friday; Mr. Robert V. Light, Mr. Louis Ramsey, Mr. Harley Cox, Jr., Mr. Sam Harrison and Mr. Bruce Bennett.

Whereupon, the following proceedings were had and entered of record, to-wit:

The Court (Judge Sanborn): Gentlemen, this is a three-judge court, which is convened for the purpose of hearing the case of Shelton, et al., vs. McKinley, et al., and we will hear from you Mr. Booker.

MOTIONS RE DISMISSAL OF CERTAIN DEFENDANTS

Mr. Booker: If Your Honor please, first we should like to interpose a Motion agreeing with the Attorney General of Arkansas to the extent of dismissal of the Attorney General without prejudice.

Judge Sanborn: Very well.

[fol. 59] Mr. Booker: And we should like to also enter the same type of motion if Your Honors please, and we will draw the orders later, if the Court will permit, as to the Prosecuting Attorney of this District. Mr. Louis Ramsay of Pine Bluff is counsel for the Pine Bluff School Board, and Arkansas Agricultural, Mechanical & Normal College, and he has filed a Motion showing that one of the members of the Pine Bluff School Board has resigned and the resignation was accepted before the filing of this complaint and we would like to release him.

Judge Sanborn: Very well.

Mr. Booker: And there's another name, who was not a member, and we would like to release that party. We are attempting to stipulate that the successor in office will be interposed as the succeeding defendant.

Judge Sanborn: That may be understood.

OPENING STATEMENT ON BEHALF OF PLAINTIFFS BY MR. BOOKER

Mr. Booker: We don't think it's necessary, if Your Honors please, for a long opening statement. We do want to call the Court's attention to the fact that we are filing this suit as a class action, both as to the plaintiffs and the [fol. 60] defendants, and B. T. Shelton as one of the plaintiffs has filed this suit for himself and others similarly situated under the Rules and the Statutes, as set out in the

complaint. He is attacking the constitutionality of two Acts of the State of Arkansas, one known as Act 10 of the Second Extraordinary Session of the General Assembly of 1958, this Assembly having been called by the Governor of the State, Governor Faubus, in August of 1958. It assembled on the 26th day thereof, and a package of bills handed to the Legislature, which package was passed, including Act 10 within two or three days following the meeting of the Assembly. I refer to that so as to show the haste with which these bills were not only introduced but passed. The Assembly did not adjourn *sine die*. It recessed, which recess was carried over until nearly the opening day of the regularly scheduled session of the Legislature in January 1959. Act 10, very briefly stated, was passed at the Special Session. It provided that the superintendents, principals, teachers of public schools in Arkansas, presidents, members of the faculties and so forth of the higher institutions of learning should submit to the Board an affidavit which was substantially in the following form:

[fol. 61] "I, (Naming the person), being an applicant for the position of ....., being first duly sworn, do hereby depose and say that I am now or have been within the past five years a member of the following organizations and no others:"

"And further, that I am now paying, or within the past five years have paid, regular dues or made regular contributions to the following organizations and no others:"

The Act made it a condition precedent that this affidavit must be filed by the teachers, principal, superintendent, prior to the execution of any contract by the Board or the College Board in case of an institution of higher learning, and that no funds should be paid that particular person unless and until that affidavit had been filed. B. T. Shelton, a teacher at Dunbar Junior High School for half days and Horace Mann High School for the remainder of the day, a teacher employed by the Little Rock Special School District, refused to execute such an affidavit and instead prepared a statement which he attached to the affidavit, substantially stating that to execute it would be a violation of [fol 62] his constitutional rights, right of freedom of as-

sociation, assembly, free speech and that it also smacked of a Bill of Attainder. The Board met on the 4th of May and at this meeting numerous teachers were discharged. There was, however, a differentiation in the classification of the discharged employees, or teachers. Those who had not executed the affidavit required by Act 10 were in one set and the others in another set. Shelton, in filing this action, also attacked Act 115, which was passed at the regular Session of the Legislature, which Legislature convened in January of 1959, and this Act is one to make unlawful the employment by the State, the School District or any county or municipality thereof, of any member of the National Association for the Advancement of Colored People, and to provide penalties for its violation. Shelton, for himself and others similarly situated, knowing he was a member of the NAACP and that possibly others who were employees of the State or county or municipal segments of the Government could or would or have been or are members, also attacked it virtually on the same grounds as 10, because they have a right to association, and it violated his right of speech, his right of peaceable assembly, as set out in the first amendment to the Federal Constitution and a restriction upon the State in the 14th Amendment to the Fed-
[fol. 63] eral Constitution. After Shelton was given a statement, or sent a statement, by the School Board through the superintendent and principal, notifying him that he must sign this affidavit under Act 10, after he had returned it with his statement showing his reasons for not signing it, he, knowing or feeling very seriously the fact that the School Board was going to meet, and it was generally publicized that the purpose of the meeting was to elect teachers, then filed this action, which is a class action, for himself and others similarly situated. The purpose of the suit being to enjoin the enforcement, application and compliance with Acts 10 of the Extraordinary Session, and 115 of the General Session, for the reasons which I have given, and the reasons set out more fully in the complaint. The amended complaint is the pleading upon which we are standing if Your Honors please, and in the amendment we brought in as parties plaintiff the Arkansas Teachers' Association, which is a corporation—a benevolent corporation

—of Arkansas, incorporated in 1951, after having existed as an unincorporated association for approximately forty years. This association has as its members the Negro teachers of Arkansas who banded themselves together for the purpose of educational advancement and professional [fol. 64] growth and in addition thereto they have a provision for the welfare of the teachers. It is in that and under that provision of their Constitution that we bring them in as parties plaintiff and we also bring in T. W. Cobbs as a party plaintiff, the executive secretary of this organization, in order that the welfare of the teachers, Shelton and others similarly situated, would be safeguarded. At the same time we named as additional parties defendant the Pine Bluff School Board because we felt that it was in the center of the State and had probably more teachers of our group in it than any other particularly outlined or set district and, for that reason, we named them and Arkansas Mechanical & Normal College as additional defendants. We feel that we have satisfied and complied with the Rules with reference to a class action and we feel further that the relief as prayed for in the complaint, which I am certain the Court has heretofore read, is certainly the relief to which we are entitled as follows: That a temporary restraining order be issued enjoining the enforcement, compliance and so forth of Acts 10 and 115 aforesaid. Two stays have been granted under the Rules of Civil Procedure, one stay [fol. 65] of ten days upon hearing the matter by this court on May 4th and an additional stay on the 13th of May of ten days. That time expired yesterday, but we took faith and counsel and felt safe and sure that nothing would be done because the parties had already been notified that the matter would be presented this morning, so that we are here to obtain a restraining order on the basis of our complaint and we are further asking that the court enter this injunction and restrain the defendants and each of them, which of course would apply particularly to the Little Rock School Board, from refusing to employ B. T. Shelton, and B. T. Shelton is asking as a plaintiff representing the interests of those similarly situated that the other School Boards over the State, be restrained and enjoined from dismissing or failing to employ any of its

teachers by reason of failure to execute Act 10 or by membership in the National Association for the Advancement of Colored People. Today, we also are asking a declaratory judgment setting out the rights of the parties as outlined in the complaint and that the Court adjudge and declare the rights of all parties involved. We feel, if the Court please, that this is a matter of real importance to the people of Arkansas for there are over fifteen thousand teachers in the State touched by Act 10. And there are numerous— [fol. 66] almost innumerable persons touched by Act 115. So that the importance of it cannot be too gravely presented because not only is this touching members of Shelton's racial group, but it touches every segment of society in Arkansas, and it is vastly important that this court today give us relief permanently from that which can cause chaos and misery to a large number of people of Arkansas and probably save, through the action today, the future of the public schools of our state and the institutions of higher learning in order that those people who are well qualified will not be compelled to sacrifice their academic freedom.

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Sanborn: Mr. Booker, may I ask whether in your opinion there is any factual issue in this case, or is it purely a question of law?

Mr. Booker: Well, I believe, if Your Honor please, that we could stipulate as to some facts. There would have to be, I presume, some fact as to Shelton being a teacher employed by the high school or the Little Rock Special School District, and the fact that his contract was not renewed because he failed to execute the affidavit. Other than that, I believe that it's a legal matter.

[fol. 67] Judge Sanborn: Well, I think we assumed that the issue was whether the allegations of the complaint were sufficient to stay the claim upon which relief could be granted and of which the court had jurisdiction.

Mr. Booker: That is correct.

Judge Sanborn: Now that, I take it, is purely a legal issue.

Mr. Booker: Yes, sir. I take it, however, that we would have to establish it prima faciely.

Judge Sanborn: Well, you proceed the way you wish to proceed.

Mr. Booker: May I present the other members of the defense, if Your Honor please?

Judge Sanborn: Surely.

Mr. Booker: Thad D. Williams, of our city; C. C. Mercer, one of the counsel for the plaintiffs, and Harold B. Anderson. Mr. Louis Ramsey of Pine Bluff, Arkansas, represents the School Board there, and Mr. Harley Cox. Mr. Light and Mr. Friday represent the Little Rock Special School Dis- [fol. 68] trict. Mr. Harrison and Attorney General Bennett, represent the Attorney General's office, but we've released them.

Mr. Bennett: However, we are still interested.

Judge Miller: Mr. Booker, the Answer of the School Board I think obviates the necessity of introducing proof because in paragraph 2 they admit the plaintiff Shelton decline to execute and sign said affidavit and they also, inferentially, admit he hasn't been reemployed. Isn't that your construction of the Answer?

Mr. Friday: Your Honor I didn't hear the last statement.

Judge Miller: I said, and, inferentially, admit that he has not been reemployed. They don't admit that he hasn't been reemployed merely because he didn't execute the affdavit.

Mr. Friday: I think that's correct in the sense of the contract having been sent out and signed between the parties. We will also admit he is a member of the NAACP. [fol. 69] Mr. Booker: That brings it, if Your Honor please, down to the legal question. Our facts would have to—I mean our testimony would have to show why he was dismissed inasmuch as they don't admit that he was dismissed on account of Act 10.

Judge Sanborn: Well, how about that, Mr. Friday? How far does the School Board go in admitting the allegations of the Complaint?

Mr. Friday: May I come forward?

Judge Sanborn: Surely.

Mr. Friday: Your Honor, before answering your specific question, would you let me make a little statement as to

what our position will be as near as we can tell it at this time?

Judge Sanborn: Surely.

OPENING STATEMENT ON BEHALF OF DEFENDANTS BY MR. FRIDAY

Mr. Friday: The Little Rock School District, the members of the Board and the superintendent, have been named as parties defendant in this case. As to the position of the [fol. 70] defendants, due to certain matters that the Court is familiar with, it's a little bit confused at this time, but I suppose as a State Agency, when these Acts are challenged we are obligated to at least call to the attention of the Court all proper defenses that may be raised by any of the parties. I would like to again, along those lines, call to the attention of the Court the various defenses that we have raised, one of which—which I think deserves the serious consideration of the Court—is the application for a stay that was set forth in our Answer and, just briefly so there will be no misunderstanding and in accordance with my desire to at least, as a state agency, get all defenses before the Court for whatever disposition the Court desires to make of them, I point out that in my opinion there are serious matters of interpretation involved here which should be properly left to the state court. I realize that this is, as has been stated, contract time with most of the districts, but, nevertheless, since constitutional questions are involved, since the school terms will not begin until next September since, in all probability, many lawsuits will be filed, certainly in the Little Rock School District concerning the action that has been taken, concerning matters involved, as Your Honors perhaps know, in an election [fol. 71] today involving many of the teachers here that will clarify the status of all of the teachers including Mr. Shelton and many others that are involved. Now the state courts might interpret—I think they could interpret these statutes as perhaps not applying to plaintiffs who had outstanding contracts by virtue of other state laws that give teachers, or purport to give teachers, certain tenure rights. It might well be that since there was an existing contract, if that contract is not terminated by state law that the state

court would interpret either of these statutes as not applicable to an existing contract because it would otherwise constitute an impairment of that contract. Several other matters might well be clarified by the state courts considering these two statutes that would certainly justify the court in exercising a discretion to stay. I'll cite one case—and I realize there are many. Most of them apparently go off on whether the statutes are absolutely clear on whether any interpretation of the state courts would be helpful, but certainly they all agree that this is a discretionary matter that should not be lightly treated by the court. In Bryan v. Austin which involved a very similar—I haven't compared it word-for-word, but it appears to be almost identical to Act 115, a three-judge court had this to say—and frankly [fol. 72] Act 115 in my opinion involves much more serious constitutional issues than Act 10 does if considered alone, and this decision does cover the equivalent of Act 115. The three-judges in that case stated—

"It may be true that the statute in question is clear—now I don't mean to be arguing, but since this is in the form of a motion and should be preliminarily considered, I'll ask the indulgence of the Court to let me cite just a few cases on the point—it may be true that the statute in question is clear and unequivocal but this does not prevent us from exercising our discretion in requiring that it be submitted to the state court for interpretation. To declare an Act of the State Legislature unconstitutional should be left to the State Court. This of course would not apply to statutes and constitutional provisions which have already been declared unconstitutional by the United States Supreme Court in the school segregation cases. We hold that the federal court should stay proceedings and permit the state courts to pass upon the constitutionality of the act in question. It is only by doing this that we avoid conflict between state and federal courts and preserve harmonious relationships [fol. 73] which have heretofore existed between them". Actually, as I traced this decision down, it ultimately got to the Supreme Court, and I believe the question became moot because they changed the particular statute up there. Now if that was true as to a statute as apparently severe as 115 I think it's certainly true as to a statute as moderate

on its face as Act 10. I think also these matters of interpretation bear upon the defense that we set up in the first paragraph of our Answer pertaining to the jurisdiction of the Court. Now, there's no question that a justiciable case or controversy must exist, and most certainly this is true when serious constitutional questions are involved. There have been many decisions on the point. One that we think would be applicable would be United Public Workers vs. Mitchell, which is 330 U. S. 75, involved the Hatch Act interpretation where the Court stated the power of Courts and ultimately of this Court to pass upon the constitutionality of Acts of Congress arises only when the interest of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. Now it may well be, Your Honor, in the [fol. 74] very near future that State court decisions could determine that Mr. Shelton's contract has been renewed as a matter of law under existing Arkansas statutes so that he has no actual interference at this time. The many ramifications that will arise in litigation that is I think undoubtedly going to come about in the state courts, will determine whether or not even a case of controversy exists here. Now, again, I say our position is we feel, as a state agency, when these laws are challenged, even though we are not the enforcement arm of the state and the situation was existing to Mr. Bennett, the Attorney General, who has now been dismissed from the lawsuit voluntarily, we do feel obligated to point out as I believe—to the Court—as we see it, these various questions for such determination as the Court cares to make. Now, with that statement, I will go back and attempt to answer the specific question that you have in the event you reach the merits of the case. Would you clarify it again, Your Honor, for my benefit so that I can attempt to do it?

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Sanborn: I just wondered whether it was necessary for Mr. Booker to put in, in the way of evidence, how much was admitted and how much was not admitted.

[fol. 75] Mr. Friday: Well, Your Honor, it occurs to me that the matter might be handled this way. I think cer-

tainly in this proceeding. I am strenuously opposed to getting involved in this Court any factual determination as to whether there were any discharges at all or unlawful discharges by virtue of certain proceedings that took place on May 4th down there. Now we have admitted that Mr. Shelton—if you reach the merits—we have admitted that Mr. Shelton was an employee of the School District; we have admitted that he did not file the affidavit under Act 10; we have admitted that he is a member of the NAACP, and we of course will admit that our school officials will act in compliance with State law, and if the State law prohibits employment—prohibits renewal, we of course could take no position but that we would comply with the provisions of those state laws, which is the only position we could take on it.

Judge Henley: Mr. Friday—

Mr. Friday: Yes, sir.

Judge Henley (Continuing): —If the Court, as you have [fol. 76] suggested the Court ought to do, should stay its hand pending determination of some of these issues in State Courts, what situation will the school districts over the State face with respect to entering contracts or changing contracts, when these questions are ultimately determined in the state courts? That is, as I understand it, it's now contract time. Do not the school districts need to know at this time whether they can proceed to enter into contracts without regard to Acts 10 and 115, or whether they must enforce compliance with them? I guess what I really want to know is—I'm really asking several questions—can the effect of Acts 10 and 115 be delayed or suspended at this time without extremely serious consequences or possible serious consequences to the schools next September when schools reopen, assuming that in the interim there is a State Court decision deciding that the schools must do something they have not done or must not do something they have already done?

Mr. Friday: I think the concern expressed is quite proper. I think it would put them in somewhat of a dilemma, there's no question about that, Your Honor. I think also that even [fol. 77] though there might be some inconvenience and what not, that's true of most any statute that is involved; that

was certainly true—and I was looking for the exact language—in Bryan v. Austin, with an almost identical Act as 115, when the court said, "we realize there will be inconvenience" and so forth, "nevertheless in respect for this principle of honoring the proper relationship between the federal and the state authorities, we are going to let it go to the state court." I also point out, Your Honor, that these plaintiffs could have gone to the state court. They could still file their proceeding in the state court. Injunction remedies are available in the state court and I would assume, as this Court must of course, that if they have a meritorious cause they will get it fairly and justly adjudicated in the state court. I don't know how else to answer your question. I think it's certainly a proper inquiry and that's the best answer I can make under the circumstances.

Judge Henley: Thank you.

Mr. Booker: If the Court please, as to the questions discussed by Mr. Friday I should like for co-counsel Williams, Thad Williams, to reply with reference to the cases which we [fol. 78] have sustaining jurisdiction of the parties and so forth, unless—

Judge Sanborn: I wonder if this isn't a little premature, Mr. Booker, do you still feel that it's necessary to put on some evidence? Shouldn't the argument be left—

Mr. Booker: Until that time.

Judge Sanborn: Until that time. I will be glad to hear from you then.

Mr. Booker: I concur with you, Your Honor please, and at this time if the Court will permit we will introduce testimony to at least make a prima facie case.

Judge Sanborn: Very well.

Offers in Evidence

Mr. Williams: If the Court please, plaintiff would like at this time to introduce three exhibits which are certified copies from the Secretary of State of Arkansas and the Circuit Court of Pulaski County. Plaintiffs' Exhibit No. 1 for identification is the Inaugural Address of Governor Orval E. Faubus delivered to the Second Extraordinary Session of the General Assembly August 26, 1958, as reflected by the House Journal, pages 5 through 11 of the [fol. 79] Second Extraordinary Session 1958.

Judge Henley: What are you trying to prove by this? What's the purpose of introducing the Inaugural Address?

Mr. Williams: The history of Act 10, if Your Honor please.

Mr. Friday: Your Honor, for the record we will object. It hasn't been offered yet. We will object on the grounds that it is immaterial, irrelevant and incompetent to the issues involved in this case. We do not feel that legislative intent is an issue or is properly established or any light is thrown on it by this particular proclamation of the Governor.

Judge Sanborn: It might be immaterial, but we will receive it subject to objection.

(Whereupon, the document marked for identification, Plaintiff Exhibit 1, is received in evidence and made a part of this record.)

Mr. Williams: As Plaintiffs' Exhibit No. 2, I would like to offer the Petition for Incorporation of the Arkansas Teachers' Association.

[fol. 80] Mr. Friday: No objection.

Mr. Williams: Plaintiff would like to offer this in evidence.

Judge Sanborn: In the absence of objection, it will be received.

(Whereupon, the document marked Plaintiffs' Exhibit 2 for identification is received in evidence and made a part of this record.)

Mr. Williams: As Plaintiffs' Exhibit No. 3, we offer the Articles of Incorporation of National Association for the Advancement of Colored People as certified by the Secretary of the State of Arkansas.

Judge Sanborn: Is there any objection?

Mr. Friday: No, sir.

Judge Sanborn: It will be received.

(Whereupon, the document marked Plaintiffs' Exhibit No. 3 for identification is received in evidence and made a part of this record.)

[fol. 81] Mr. Williams: Plaintiffs' Exhibit No. 4 is Act 115 of the 1959 Acts of Arkansas.

Judge Sanborn: That may be received. I take it there's no objection.

(Whereupon, the document marked Plaintiffs' Exhibit No. 4 for identification is received in evidence and made a part of this record.)

Mr. Williams: Plaintiffs' Exhibit No. 5 is Act 10 of 19[illegible], Second Extraordinary Session.

Judge Sanborn: That will be received.

(Whereupon, the document marked Plaintiffs' Exhibit No. 5 for identification is received in evidence and made a part of this record.)

COLLOQUY BETWEEN COURT AND COUNSEL

Mr Williams: Our first witness is plaintiff Shelton.

Mr. Bennett: If the Court please, I hate to interrupt. I would like to point out to this Court that the National Association for the Advancement of Colored People at this time is not qualified to do business in Arkansas, its license having been forfeited last year for failure to pay a franchise tax in this state, sir.

[fol. 82] Judge Sanborn: Is that conceded?

Mr. Williams: That is conceded.

Mr. Friday: Your Honor, we will treat that as a stipulation.

Mr. Williams: No, sir, we are not representing the National Association for the Advancement of Colored People.

(Counsel for the plaintiffs confer off the record.)

Mr. Williams: If the Court please, we would like to stipulate that the NAACP's charter has been revoked.

Judge Miller: It hasn't been revoked except for the purpose of doing business here—

Mr. Williams: We have no information on it and for that reason we would not like to admit—

Judge Miller: The only information I have is what I have read in the newspaper; I've never seen it disputed on appeal or litigation pending.

[fol. 83] Mr. Williams: Mr. B. T. Shelton.

Whereupon, B. T. SHELTON being first duly sworn, testified as follows:

Direct examination.

By Mr. Williams:

Q. State your name please.
A. My name is B. T. Shelton.
Q. You are the plaintiff in this action, is that correct?
A. Yes, sir, I am.
Q. Where do you live, Mr. Shelton?
A. I live at 1827 Wolfe Street, Little Rock.
Q. Where are you employed?
A. I am employed at the Dunbar Junior High School and the Horace Mann Senior High School.
Q. How long have you been in the teaching profession?
A. I have been in the teaching profession about twenty-seven years.
Q. How long have you been employed with the Little Rock Special School District?
A. Over twenty-five years.

Judge Sanborn: Mr. Williams, if you wish to you may lead the witness up to the point where the defendants object. [fol. 84] That may save some time.
Mr. Williams: Thank you.

Q. During the period when you were teaching for the Little Rock Special School District, have you ever received any complaints about your work?
A. No, sir, I have not received any complaints.
Q. On or about April 3, 1959, did you receive from Terrell E. Powell, Superintendent of Schools, a memorandum?
A. Yes, sir, I did.
Q. I show you Plaintiffs' Exhibit No. 6 for identification and ask you if you recognize it?
A. Yes, sir, I recognize it.
Q. What is plaintiffs' Exhibit No. 6 for identification?
A. Plaintiffs' Exhibit No. 6 for identification is the affidavit form.
Q. Does it also contain the memorandum from Superintendent Terrell E. Powell?
A. Yes, sir, it does.

Q. With the Court's indulgence, it's a very small portion we would like for the plaintiff to read from plaintiffs' Exhibit No. 6. I would like to offer it in evidence first.

[fol. 85] Judge Sanborn: Is there any objection?

Mr. Friday: No objection.

Judge Sanborn: It may be received.

(Whereupon, the document heretofore morked Plaintiffs' Exhibit 6 for identification is received in evidence and made a part of this record.)

Q. With the Court's indulgence, about ten lines—

Judge Sanborn: Very well.

Q. (Continuing)—in the form of a letter, and we would like to read that with the Court's indulgence.

A. This is to all Certified Personnel from Terrell E. Powell, Superintendent of Schools, Subject: Act 10, Special Session, 1958 Arkansas Legislature.

"Attached herewith is a copy of Act 10 of the Special Session of the 1958 Legislature, and a copy of the affidavit required of all school district certified personnel in the State. According to State law, this affidavit must be completed and signed by you in the presence of a Notary Public before the School Board can issue new contracts for the 1959-60 school year. Please return the notarized affidavit [fol. 86] to your principal not later than 11 a. m., on April 13. The principal should alphabetize and present the affidavits to the Superintendent's office not later than 11 a. m., April 14."

Q. Mr. Shelton did you comply with the memorandum received on April 3rd., which is Plaintiffs' Exhibit No. 6?

A. No, sir, I did not.

Q. Did you in turn send in any type of affidavit?

A. Yes, sir, I did send in some form of communication.

Q. What was the substance of the form of your communication?

A. The substance of the communication that I turned over to my principal was to the effect that I would refuse to comply with the filling out of the affidavit and executing same because I felt that it violated my constitutional rights and the constitutional rights of all others similarly situated.

Q. Have you received any other correspondence from the Little Rock Special School District?

A. Yes, sir, I have.

Mr. Friday: Your Honor, by not objecting to this particular exhibit—I simply want to make it clear that our failure to object does not in anywise bear upon whether this particular document constituted an official and legal communication by the Little Rock School Board as to a declaration of the contract.

[fol. 87] Judge Sanborn: That may be understood, Mr. Friday. We will accept all these exhibits for what we deem them to be worth.

Mr. Williams: I would like to offer Plaintiffs' Exhibit No. 7.

(Whereupon, the document marked Plaintiffs' Exhibit No. 7 for identification was received in evidence and made a part of this record.)

Q. Mr. Shelton, with the Court's indulgence, will you read Plaintiffs' Exhibit No. 7?

A. (Reading):

"Administrative Offices, Little Rock Public School,
Office of Superintendent, May 5, 1959.

Mr. Booker T. Shelton
1827 Wolfe Street
Little Rock, Arkansas

Dear Sir:

You are hereby notified that your contract with the Board of Education Little Rock School District, has not been, and will not be, renewed for the 1959-60 school year.

Very truly yours

Ed I. McKinley, Jr.
President, Board of Education
Little Rock School District

[fol. 88]

Ben D. Rowland, Sr.
Secretary, Board of Education
Little Rock, Arkansas

Judge R. W. "Bob" Laster
Member, Board of Education
Little Rock School District"

Q. Mr. Shelton, are you familiar with the customs relating to contracts or renewal of contracts of the Little Rock Special School District?

A. Yes, sir, I am.

Q. What are the customs?

A. The customs relating to the renewal of contracts with the Little Rock School District is simply that contracts are usually renewed around the latter part of May—sent out from the superintendent's office.

Q. They are renewed around the latter part of May for the next school year?

A. For the next school year.

Q. Are you a member of any communist party?

A. No, sir, I am not.

Q. Are you a member of any organization that advocates the violent overthrow of the Government by force or violence?

A. No, sir, I am not.

Q. Are you a member of the NAACP?

A. Yes, sir, I am.

Q. To your knowledge, has the NAACP, through its pro-[fol. 89] gram in this State disturbed the peace or tranquility between Negroes and whites in Arkansas?

A. No, sir, it has not.

Q. To your knowledge, has the NAACP exerted pressure on you or any other of its members to produce turmoil between the races?

A. No, sir, it has not.

Q. To your knowledge, does the NAACP allow Communists to become members?

A. No, sir, it does not. Since 1950, at each annual convention, NAACP passed a Resolution barring Communists and Reds and so forth from membership in that organization.

A. Are you familiar with the purposes of the NAACP?

A. Yes, sir, I am.

Q. What are they?

A. With the Court's permission I have the purposes—well the purposes are printed on the back of the NAACP membership card. I will read them.

(Reading) "The NAACP proposes: First, to eliminate racial discrimination and segregation from all aspects of public life in America. (2) To secure a free ballot for every qualified American citizen. (3) To seek justice in the Courts. (4) To secure legislation banning discrimination and segregation. (5) To secure equal job opportunities based upon individual merit without regard to race, religion or national [fol. 90] origin. (6) To end mob violence and to police brutality."

Q. Mr. Shelton, do these purposes express the reason that you joined the NAACP?

A. Yes, sir, they do.

Q. To your knowledge, is the NAACP a captive of any International Communist conspiracy?

A. No, sir, it is not.

Q. Referring to Plaintiffs' Exhibit 6, which is the memorandum from Terrell E. Powell, Superintendent of the Little Rock Special School District for Teachers, I would like to ask whether or not you were the only person who received this memorandum?

A. No, I am not the only one.

Q. Who else received them if anyone?

A. All of the teachers received a copy of the memorandum and the affidavit.

Q. Were you present when they received them?

A. Yes, sir; I was.

Q. Did you see all the teachers you know or the teachers where—

A. Well all the teachers at Horace Mann High School and also at Dunbar Junior High School, I was present both places because I am on the teaching staff at both schools.

Q. By chance, do you know the number of teachers in Horace Mann and Dunbar?

[fol. 91] A. Not exactly. I believe there should be about maybe thirty-seven at Horace Mann, I am not sure; and maybe about fifty-seven or nine at the Dunbar Junior High.

Q. Where did you receive your training as a school teacher Mr. Shelton?

A. Tuskegee Institute; A & M College and Chicago Technical College, special courses.

Q. Did you do some advance work at Chicago Technical College?

A. (No reply.)

Q. I think you have testified that you have never received any complaint about your work?

A. Yes, sir, I have testified that I have not received any complaints.

Q. Are you a member of the Arkansas Teachers' Association?

A. Yes, sir, I am.

Q. Are you a member of the Arkansas National Education Association?

A. Yes, sir, I am.

Q. You may examine.

Mr. Friday: Give us just one minute please.

Judge Sanborn: Surely, Mr. Friday.

(Messrs. Friday, Light, Ramsey & Bennett confer.)

[fol. 92] Mr. Friday: We don't have any questions.

Judge Sanborn: You may step down Mr. Shelton. There will be no cross-examination.

Mr. Williams: Mr. Terrell E. Powell.

Whereupon, TERRELL E. POWELL called as a witness on behalf of the plaintiff, was sworn and testified as follows:

Direct examination.

By Mr. Williams:

If the Court please, Mr. Powell is being called under Rule 43-b as an adverse witness.

Judge Sanborn: Very well.

By Mr. Williams:

Q. State your name please.

A. Terrell E. Powell.

Q. Where do you live, Mr. Powell?

A. 6601 Kenwood Road, Cammack Village.

Q. And you are employed by the Little Rock Special School District?

A. I am.

Q. As Superintendent?

[fol. 93] A. Superintendent of Schools.

Q. Do you know that the Little Rock Special School District has control of the Board of Education of the Little Rock Public Schools—is that correct? They do manage and control the Little Rock Public Schools?

A. That's right, we administer the schools.

Q. And you are an employee of the Little Rock Special School District?

A. That's right.

Q. Who are the members of the Little Rock Special School District?

A. School Board?

Q. Yes, sir.

A. Ed I. McKinley, President; Everett Tucker, Vice President; Ben D. Rowland, Secretary; Russell Matson, Bob Laster and Ted Lamb, Members.

Q. I take it, Mr. Powell, that you are familiar with the provisions of Act 10 of the Second Extraordinary Session?

A. I am.

Q. I show you Plaintiffs' Exhibit No. 6, which purports to be, or is, a memorandum from you to your teachers, and ask you if you recognize it?

A. I do.

[fol. 94] Q. Is that the memorandum that was sent from your office to all teachers within the Little Rock Special School District?

A. That's right.

Q. Approximately how many teachers are in the Little Rock Special School District?

A. At the beginning of the school year we had around eight hundred certified personnel, that includes teachers, supervisors and principals.

Q. And all these persons were sent copies of plaintiffs' Exhibit No. 6?

A. That's correct, all who still remain. Quite a few of those folks have gone.

Q. Did all the teachers comply with the request in your memorandum, Plaintiffs' Exhibit No. 6?

A. Did not.

Q. Do you know the names of the teachers who did not comply?

A. I do.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Friday: Your Honor, for clarification now as to how far we are going into this question. I thought maybe we had stipulated enough and I don't want to be obnoxious for getting up, but I do think it's important how far we are going into the particular line of inquiry that's here.

[fol. 95] Judge Sanborn: Mr. Williams, what exactly do you intend to prove further by Mr. Powell?

Mr. Williams: If the Court please, if the defendant will stipulate that B. T. Shelton was discharged because of Act 10 we will go no further.

Judge Sanborn: Well, perhaps if you will state just what you intend to prove—

Mr. Williams: I am proving. They have stipulated everything except that B. T. Shelton was discharged because of Act 10, and I am now attempting to prove by this witness that B. T. Shelton was discharged for no other reason other than Act 10.

Judge Sanborn: Well, suppose you ask that question.

Mr. Friday: I would stipulate a contempt citation, I suppose Your Honor, if I stipulated that far on it. This Court has entered a temporary restraining Order. I had thought that when we stipulated that the defendants would of course comply with the state law, that that placed before the Court probably a sufficient fact to make a determination on [fol. 96] whether a case or controversy from the standpoint of actual interference with this plaintiff's legal rights was involved. Now, I, of course, can stipulate no further than that, Your Honor. Otherwise we are going to get into—

Judge Sanborn: Well, is it necessary to go any further than that, Mr. Williams?

Mr. Williams: If the Court feels that—

Judge Henley: In view of the fact that the Court restrained the parties from enforcing this Act, or proceed-

ing under it, I don't see why the plaintiff should be required to show that they had. In fact, I don't see how he could show they had since this Court first issued its restraining order.

Mr. Williams: You don't see how the plaintiff could show that they had not enforced Act 10?

Judge Henley: I don't see how you could show they had unless you could show they were in contempt of Court because the Court ordered them not to do it.

[fol. 97] Mr. Williams: They may be in contempt of Court, but it's our contention that the defendants have discharged B. T. Shelton for no other reason than the fact that he did not comply with Act 10 since the Court's injunction.

Mr. Friday: Your Honor, I fear if we have to get into a contempt proceeding, we will be here several days.

Mr. Williams: We are not asking for a contempt citation; we are not asking for it. We are only attempting to show that the plaintiff B. T. Shelton was discharged because of his failure to comply with the provisions of Act 10.

Mr. Friday: All right. Your Honor, we would have to make a further point that Mr. Powell is the superintendent; he neither hires nor fires, has no authority to hire or fire. We have to make a further point that anything in his custody, of course, in the absence of preliminary proof, could not properly go to that issue.

Judge Sanborn: Well, Mr. Williams, you may go ahead and make your record in your own way, but don't go any further than you have to with this. I take it that what actu-

[fol. 98] ally happened was that Mr. Shelton did not file his affidavit and his contract was not renewed. Isn't that about the situation?

Mr. Williams: Yes, sir, but there are other circumstances showing that the reason that his contract was not renewed was because of his refusal to comply with Act 10.

Judge Miller: How are you going to prove that?

Mr. Williams: I'm going to prove that by certain—of course, with the Court's permission I would like to show what did happen at this meeting on May 4, 1959.

Judge Miller: That would necessitate the calling of the Board of Directors.

Mr. Williams: I think that if the superintendent was present at this meeting that he can testify as to what went on.

Mr. Friday: Your Honor, I'm at a loss as to this. For purposes of making a determination on the first question, I am reluctant to keep this Court here two or three days because it's going to force us to get every member of the Board of Directors up here to explore it fully. The injunction, if we're getting into contempt, was limited to a dis- [fol. 99] missal by virtue of Acts 10 and 115. There may have been fifteen other reasons. There's, first, a question of whether or not there has even been a dismissal. I think this plaintiff is in no different legal category, from the standpoint of having received or not received a new contract, than every other teacher in Little Rock. There is in the difference of having received a particular letter, that went in here, with some 44 others. It occurs to me that we could reach this, if they want to come back on some sort of contempt proceeding at a later date, and let the Court proceed on the immediate question.

Judge Henley: Mr. Williams, isn't it sufficient for the present purposes, to show that this plaintiff, Shelton, was a teacher, and is a teacher; that he is a member of a prohibited group; that is, that he is a member of the NAACP; that he did not file his affidavit; that his contract was not renewed and that counsel for the School Board has stated, and the Court would have to assume, that the Little Rock School Board and all other School Boards in the State would be obliged to follow these statutes if they are valid? Doesn't that make your case for present purposes?

[fol. 100] Mr. Williams: For the present purposes only, Your Honor, if it is not decided that—the question has become moot because of the fact that B. T. Shelton is no longer employed with the Little Rock School District and no longer has a right to complain as to infringement upon his rights.

Judge Henley: Well, I didn't understand that anybody was making that contention at this time.

Mr. Williams: If they are not—

Judge Henley: The Court understands that that might become a question at some point later in the proceeding. Of course, any case can become moot.

Mr. Booker: May we confer for just a second, Your Honor?

Judge Sanborn: Yes, sir.

(Messrs. Mercer, Booker, Williams and Anderson confer.)

Mr. Booker: May I ask a question, Your Honor please?

Judge Sanborn: Yes, sir.

[fol. 101] Judge Sanborn: Yes, sir.

Mr. Booker: As I understand it, Mr. Friday, by stipulation and by statements here, takes the position that it's the duty of the Little Rock School Board, as an agency of the State, to enforce Act 10, I believe that's right.

Mr. Friday: Right.

Mr. Booker: And that Shelton did not send in his affidavit. I believe that's conceded.

Mr. Friday: Yes.

Mr. Booker: That, thereafter, he was notified that he was discharged. Inferentially, I believe that that would be sufficient testimony to give the Court reason for his discharge without further testimony because we are put under the burden of attempting to prove something in the minds of the members of the Board which we can't do. We only have to take the circumstance, and that's a circumstance and, inferentially, that's true.

Mr. Friday: Your Honor, of course I can't stipulate that he was discharged—

[fol. 102] Judge Henley: Well, just a moment. Gentlemen, is it necessary to prove that he was discharged? If you assume, as the Court must, the School Board is going to follow these Acts.

Mr. Friday: We'll stipulate that. As you say—

Judge Henley: And if he is a member of the class to which the Act applies—

Mr. Booker: That is right.

Judge Henley (Continuing): —and he was employed by the Board at the beginning of this business, it seems to me that you don't have to show that he has been discharged.

Mr. Booker: That is correct, Your Honor. That's the position we take and also we're here for a declaratory judgment anyhow.

Mr. Friday: I don't think discharge at the present time is an issue in the case one way or the other. I thought in the opening statement that we agreed, and will stipulate, that our officials will comply with the state law.

[fol. 103] Mr. Williams: With that in mind, the plaintiff will turn the witness over to the defendants. With that stipulation, we will turn him over.

Judge Sanborn: Is there any cross-examination, Mr. Friday?

Mr. Friday: No, sir.

Mr. Booker: Just a moment, Your Honor please.

(Counsel confer.)

Mr. Williams: Just a couple other questions with the Court's permission.

Q. (Mr. Williams, resuming) Mr. Powell, how long have you been superintendent of schools?

A. Five months.

Q. During that period did you receive any complaints against the plaintiff B. T. Shelton?

A. I did not.

Q. Did you receive a subpoena duces tecum to bring in certain records?

A. Yes.

Q. Did you bring those records?

A. Yes. They are all in this agenda. What part of them [fol. 104] do you want?

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Sanborn: What are these records?

Mr. Williams: These records are the recommendations of Mr. Powell and the affidavit that was sent in by the plaintiff. Those are the principal records we are concerned with at this time.

Judge Sanborn: What have you to say about those, Mr. Friday?

Mr. Friday: Your Honor, this Court has ordered us to produce certain phases of this secretarial transcript down here. We have produced those and we will offer no objection under the procedure that's being followed here to any

of them that pertained to Mr. Shelton. Now, Your Honor, I do want to take the position that, at this stage, there are school districts all over the state involved and I don't want to get a precedent involved in a fishing expedition on record, so I would like to determine if the Court is going to limit me now to those aspects of it that pertains to Shelton and he can ask if there are any other phases of it. I don't want to just turn it over and get the whole thing in the record, or for examination, at this stage.

[fol. 105] Mr. Williams: Mr. Powell, will you turn to the page that pertains to the plaintiff B. T. Shelton?

Judge Sanborn: Mr. Friday, is it understood that the portions of these records which relate to Mr. Shelton may be received in evidence?

Mr. Friday: Yes, sir.

Judge Sanborn: Very well.

Mr. Williams: If the Court please, I would like to introduce as an exhibit to Mr. Powell's testimony Plaintiffs' Exhibit No. 8, that is the last page—

Judge Sanborn: That refers to Mr. Shelton, does it?

Mr. Williams: Yes, sir.

Judge Sanborn: It's understood that all parts of the record referring to Mr. Shelton may be received in evidence.

Mr. Williams: I don't imagine we can take this book, so this will have to be copied.

[fol. 106] Judge Henley: Well I think perhaps you better, after the Court recesses, or after this hearing is ended, make such excerpts as are necessary and hand them to the clerk. I don't think we need that whole book.

Mr. Williams: There are about three pages we want.

Judge Sanborn: Will it take very long to read those into the record?

Mr. Williams: No, sir, I don't think it will take very long.

Judge Sanborn: I think we will take a recess for ten minutes at this time.

(Whereupon, a ten minute recess was taken and, thereafter, the following proceedings were had:)

TERRELL E. POWELL resumed the witness stand and the further direct examination by counsel, continued.

Questions by Mr. Williams:

Q. Mr. Powell, I think your record will indicate that there were six people in the Little Rock Special School District who did not comply with your request, so far as complying [fol. 107] with Act 10. Is that correct?

A. I believe that's right. Do you have it there?

(Witness examines document.)

Yes, that's right.

Q. And B. T. Shelton is among those six. Is that correct?

A. That's correct.

Q. Were any of these six persons rehired—or have any of these six persons been rehired by the Little Rock School District?

Mr. Friday: Your Honor, I will have to object to the phrasing of the question because there is a serious legal question involved in view of the word "rehiring," and for the further reason that this witness is not qualified to answer the question, no ground work having been shown. He has no authority to hire or rehire.

Q. I'll rephrase the question if Your Honor please.

Judge Sanborn: Very well.

Q. Do you know whether or not each of these six persons was sent copies of a letter identical with that addressed to Mr. B. T. Shelton, which is Plaintiffs' Exhibit No. 7?

A. I do not know.

[fol. 108] Q. Were you present at the meeting?

A. I wasn't there for the entire meeting.

Q. Were you present at the time that a motion was made not to rehire B. T. Shelton?

A. I was.

Q. Were you present when a motion was made not to hire the four other persons who had not complied with Act 10?

A. There was no reason given as to why. Act 10 wasn't mentioned.

Q. I would like to repeat my question, were you present when the other persons' contracts were considered who did not comply with Act 10?

A. I was present when all 44—

Q. But were you present when the motion was made, individually, that concerned the six persons who did not comply with Act 10 that their contract not be renewed?

A. They were not distinguished from the others, as I said I was there when all of them—

Q. You were there when they all were made?

A. That's right.

Q. Was there not a motion that each teacher who did not comply with Act 10 not be rehired?

A. I don't think that motion was made.

Q. Was there a motion individually of each of the six persons?

A. There was a motion made that each of the 44 not be [fol. 109] rehired, but Act 10 wasn't mentioned in the motion.

Q. Was there a motion made that any person be rehired who had not complied with Act 10?

A. There was one person on there that was not discharged and I don't recall whether she was rehired or not.

Q. I would like to repeat my question please. My question was, was any teacher rehired or was there a motion made to rehire any teacher who did not comply with Act 10?

A. I don't know; there was one person on there who was not discharged so I don't know whether she was rehired. I don't remember. I would have to go back to the minutes and find out. I can give you her name there.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Friday: Again, could we simplify this by putting in the record these papers—this is a secretarial transcript—and let the court draw whatever conclusion—

Mr. Williams: I would like to do that.

Mr. Friday: I have copies of the three pages—

Judge Sanborn: If you have no objection Mr. Friday, the minutes will be received with reference to what was done about these people who failed to comply with the affidavit.

[fol. 110] Judge Henley: Do you have copies there?

Mr. Friday: I have copies of the particular pages of the transcript—the secretarial transcript that Mr. Powell has,

and I understood they wanted. I have not actually typed the names of the other persons but I have indicated the disposition made. I did not feel that names at this point were material.

Judge Sanborn: There were how many, five besides Mr. Shelton?

Mr. Friday: There were five besides Mr. Shelton. The particular motion though concerned only four of the five.

Judge Sanborn: Isn't that enough Mr. Williams?

Mr. Williams: Yes, sir, if it is understood that five of these people were discharged, all the people were discharged because they did not comply with Act 10.

Judge Sanborn: Well, I don't think that "because" perhaps belongs in there. They were people who had not complied by filing the affidavit and their contracts were not renewed.

[fol. 111] Mr. Williams: Okay.

Mr. Friday: I will stipulate that these three pages came from the secretarial transcript of the proceedings, if that's what they want.

Judge Sanborn: Well that may be understood and these papers will be received in evidence.

(Whereupon, the document marked Plaintiffs' Exhibit No. 8 for identification, is received in evidence and made a part of this record.)

Judge Miller: Do you mean that out of the entire teacher personnel there was only six of them that refused to file the affidavits? Is that correct?

The Witness: That's correct.

Mr. Friday: That's correct, Your Honor.

Judge Miller: All right.

Mr. Friday: But only five of the six received the letter that is in evidence. So there will be no misunderstanding.

[fol. 112] Mr. Williams: Will it also be stipulated that the other person has not been sent a letter stating that she was rehired—the other person has not been rehired?

Mr. Friday: I don't want to use the word "rehire." If Mr. Powell says the other person did not get a letter I'll so stipulate. Do you know?

The Witness: She wasn't sent a letter.

Mr. Friday: All right, sir. The sixth person on the list that did not file an affidavit did not receive such a letter.

Judge Sanborn: Very well.

Q. (Mr. Williams, resuming) But did this person, Mr. Powell, did this sixth person, was she issued a new contract for the 1959-60 school year?

A. No contracts have been re-issued yet.

Q. Well was she recommended?

A. I don't know. I'd have to look in the minutes to see. There were eight hundred people and they took a lot of them individually and I just don't know.

Q. Did you recommend her?

A. Recommend what?

[fol. 113] Q. The teacher.

Judge Henley: That's what he just said. He didn't know without looking at the minutes.

Mr. Williams: May Plaintiffs' Exhibits 9, 10 and 11 be admitted?

Judge Sanborn: They may be admitted.

(Whereupon, Plaintiffs' Exhibits Nos. 9, 10 and 11, heretofore marked for identification, are received in evidence and made a part of this record.)

Mr. Booker: I believe that's all, Your Honor please, with that witness.

Cross examination.

By Mr. Friday:

Q. Mr. Powell, I hand you a copy of a letter that has been introduced in evidence as plaintiffs' Exhibit 7, and ask you, if you know, was this letter in form sent to 44 school teachers?

A. I don't know. I don't think it was.

Q. All right sir.

A. Let's see. Yes, that is the letter that I presume was [fol. 114] sent to all of them. I wasn't there when the letter was written.

Q. All right. That's all.

Redirect examination.

By Mr. Williams:

Q. You say you did not know?
A. I think that they were sent. I didn't execute them or wasn't there when they were sent.
Q. But you do not know?
A. I don't know.

(The witness was excused.)

Mr. Williams: T. W. Cobbs.

T. W. Cobbs called as a witness on behalf of the plaintiff, was sworn and testified as follows:

Direct examination.

By Mr. Williams:

Q. Your name is T. W. Cobbs and you reside in Little Rock. Is that correct?
A. T. W. Cobbs.
Q. You are executive secretary of the Arkansas Teachers' Association?
[fol. 115] A. I am.
Q. About how long have you been teaching, Mr. Cobbs?
A. Fifty-four years.
Q. Where did you receive your training?
A. Arkansas Baptist College; Arkansas A & M College; Hampton Institute.
Q. You have done most of your 54 years in the teaching profession, is that right?
A. 54 years.
Q. Now, the ATA is a corporation organized under the laws of the State of Arkansas, is that correct?
A. It is.
Q. And how is it supported?
A. Supported by membership dues from the teachers, members.
Q. What persons constitute the membership?

A. Any individual who is capable of making—I have possession of a license to teach school in Arkansas—and any person who is in sympathy with the policies and plans of the Association, though he may not be actively teaching though is capable of teaching.

Q. Who are members of the ATA?

A. They are for the most part Negro teachers of Arkansas.

Q. In public schools?

A. Public schools and private schools.

Q. Approximately how many members do you have in the ATA?

[fol. 116] A. Approximately, potential members 3200. The records show there are 2900 who paid annual dues for this year.

Q. How many non-teacher members do you have?

A. Perhaps two, I remember.

Q. Will you very briefly tell the court the purpose of the ATA?

Judge Miller: Don't their Charter show? Don't the Articles of Incorporation show?

Mr. Williams: Not completely, Your Honor.

Q. (Resuming) Very briefly, Dr. Cobbs.

A. The purpose of the Association is to develop the ethical, moral, professional and social attitudes of its members; and also to promote and protect the general welfare of teachers.

Q. Are members of the ATA employed throughout the State of Arkansas?

A. Throughout the State of Arkansas where there are Negro teachers.

Q. Is it true that when a member stops teaching within the State of Arkansas, he relinquishes his membership?

A. That's their rule; stop teaching they stop paying. Membership stops, one; payment, two.

[fol. 117] Q. Do you know whether or not any of the members of the ATA are employed at AM&N College?

A. They are.

Q. That is the same as Agricultural, Mechanical & Normal?

A. We have members—

Q. One of the defendants in the case. Are any of the members employed by the Pine Bluff Special School District?

A. We have.

Q. Are any of the members of the ATA employed by the Little Rock Special School District?

A. They are.

Mr. Williams: You may question.

Mr. Friday: No questions, Your Honor.

Judge Sanborn: You may step down Mr. Cobbs.

(The witness was excused.)

Mr. Williams: Lawrence Davis.

Whereupon, LAWRENCE C. DAVIS called as a witness on behalf of the plaintiff, being first duly sworn; testified as follows:

[fol. 118] Direct examination.

By Mr. Williams:

Q. Your name is Dr. Lawrence C. Davis, is that correct?

A. Yes, sir.

Q. You are President of the AM&N College, a defendant in this case?

A. Yes, sir.

Q. Are you familiar with the provisions of Act 10?

A. I am.

Q. Did you require the members of your faculty to file under Act 10?

A. They have not filed. The Board took the position that it had to in accordance with the law, require that our teachers comply; however, the contracts have not been issued at the time the restraining order was issued and therefore they have not complied.

Q. Approximately how many teachers do you have at AM&N College?

A. The instructional staff is comprised of about 94 people; the staff as a whole, that is all employees, would

number about 160 who would be classified as instructional and non-instructional.

Q. Do you know whether or not these teachers are all members of the Arkansas Teachers Association?

A. I am sure they are not all members; some of them are, [fol. 119] and they are encouraged to be members as a professional obligation.

Mr. Williams: You may question.

Mr. Ramsey: No questions.

Judge Sanborn: Very well. You may step down.

(The witness was excused.)

Mr. Williams: Dr. Trice.

Whereupon Dr. J. A. Trice called as a witness on behalf of the plaintiff, after being duly sworn, testified as follows:

Direct examination.

By Mr. Williams:

Q. State your name, please sir.

A. J. A. Trice.

Q. And you are the superintendent of the Pine Bluff Special School District?

A. That's right.

Q. How long have you been so employed?

A. This is the second year as superintendent.

Q. The Pine Bluff Special School District does manage and control the affairs of the public schools in Pine Bluff, [fol. 120] Arkansas. Is that correct?

A. That's correct.

Q. Are you familiar with the provisions of Act 10?

A. I am.

Q. Were the teachers and personnel required to file under Act 10 in the Pine Bluff Special School District—were they required to sign?

A. Yes.

Q. Have they signed?

A. They have.

Q. Did all of them sign?

A. That's true.

Q. Approximately how many are there?

A. We have 275 professional employees and of that group 259 complied with Act 10, the others had already determined that they were going to resign before the memorandum was sent around asking them to sign. That's a difference of sixteen. None of the sixteen were discharged.

Q. Ordinarily, with respect to the contracts or renewal of contracts, what is the custom with respect to renewal of teachers' contracts?

A. You mean as to time?

Q. Yes, when do they renew them?

[fol. 121] A. Well that depends. Last year we renewed them earlier than this year. It's usually anywhere from March to May.

Q. Is it not the custom that during this period if they are not notified otherwise they are rehired?

A. If they are not notified by the expiration of ten days after school is out, they are automatically employed. We have a state law to that effect.

Judge Sanborn: Any questions?

Mr. Ramsey: We have no questions, Your Honor.

Judge Sanborn: You may step down.

(The witness was excused.)

Mr. Williams: Mr. Joe Hudson.

Whereupon, Mr. Joe Hudson called as a witness on behalf of the plaintiff, was sworn and testified as follows:

Direct examination.

By Mr. Williams:

Q. State your name please sir.

[fol. 122] A. Joe L. Hudson.

Q. Where do you live Mr. Hudson?

A. North Little Rock.

Q. Where are you employed?

A. State Department of Education.

Q. What is your title with the State Department of Education?

A. Director of Disbursements and Accounting.

Q. As such an official, are you in custody of the names and the number of persons who are public school teachers in the State of Arkansas?

A. The Department of Education has such a list. It is not in my custody.

Q. Do you know the number of public teachers within the State of Arkansas?

A. I can refer to the statistical summary which is an official publication for the year '57-'58. The grand total number of teaching positions as shown in this report is 15,089.

Mr. Bennett: No questions.

PLAINTIFFS REST

Mr. Williams: If the Court please, the plaintiffs rest at this time.

Judge Sanborn: Mr. Friday, have you anything that you wish to put in?

[fol. 123] Mr. Friday: Your Honor, could you give us about one minute? I think we can do it right here.

Judge Sanborn: Certainly.

(Messrs. Friday, Bennett and Light confer.)

Mr. Booker: If your Honor please, I think we will excuse Mr. Guthridge. We subpoenaed him.

Mr. Friday: May it please the Court. Your Honor, along the line of my original statement that I made, which concedes my position in this, but representing an agency of the State we feel obligated to put on any matters that we think may bear on these Acts, because after all the Legislature did pass them. Now, to that end and because this question appears to have been opened up by the testimony of Mr. Shelton, I would like to call the chief law enforcement officer of the State, Mr. Bennett, who is the Attorney General, for a few questions pertaining to 115. These questions do not pertain to 10.

Judge Sanborn: Very well.

Whereupon, MR. BRUCE BENNETT called as a witness, be-
[fol. 124] ing first duly sworn, testified as follows:

Direct examination.

By Mr. Friday:

For the benefit of the Court I will proceed—as I believe the Court stated to one other witness perhaps this will infringe a little bit maybe on legal matters and a little bit on leading—until an objection arises.

Judge Sanborn: All right.

Q. State your name.

A. Bruce Bennett.

Q. What is your official position with the State of Arkansas?

A. Attorney General with the State of Arkansas.

Q. As Attorney General, Mr. Bennett, have you had an occasion to make a study of various Acts of the Legislature pertaining to schools and related matters?

A. Yes, sir.

Q. Does the Legislature of the State of Arkansas appropriate money for schools in Arkansas?

A. Yes, sir, they do, a considerable amount of money.

Q. Does the Legislature otherwise deal with school districts in their operations?

A. Yes, sir, the Legislature outlines the general pattern
[fol. 125] under which school districts must operate. For instance, they set the amount of hours a teacher must have in order to receive a license; they have something to do with the teachers' retirement, and there are many aspects of the teaching profession with which the Legislature deals.

Q. What is the Legislative Council?

A. The Legislative Council is an instrument of the Arkansas Legislature which has an appropriation and it is an interim body composed of people elected by the representatives and senators, some appointed by the Governor, and its function is as an interim body to study the budgets and other things with which a State Government should concern itself while the Legislature is not in session.

Q. Does it find facts to be presented to the Legislature

for assistance to the Legislature in enacting legislation?

A. That is true.

Q. Is there a special education committee of the Legislative Council?

A. Yes, sir, the Special Education Committee of the Legislative Council is composed, I believe, of thirteen or fourteen chairmen of the Standing Committees of the Arkansas Legislature. Those fourteen individuals have legislative experience, averaging about fourteen years each. [fol. 126] Q. Did this Committee conduct an investigation in December of 1958?

A. It did.

Mr. Booker: Just a moment please. We would like to object at this time because he is asking if a Committee of the Legislature made an investigation of the NAACP. We want to object to that on the grounds that it is incompetent, irrelevant and immaterial.

Judge Sanborn: The testimony will be received subject to the objection which was made.

The Witness: I might add, in regard to those hearings held in December, that the completed transcript—the hearings were held for three days—it was reduced to writing, the witnesses under oath, and the testimony, along with all the evidence and papers introduced in evidence, were reduced to writing and the House of Representatives voted to place the findings and the testimony and transcript of those hearings in the House Journal, and it is now a record of the State of Arkansas, filed in the Secretary of State's office.

Q. Can you testify, as the chief law enforcement officer of the State, that you have personally examined the official records and the findings and conclusions of that Committee are part of the official record of the State of Arkansas? [fol. 127] A. Yes, sir, it is.

Q. Did you conduct the hearings before this Committee in December in your capacity as chief law enforcement officer of the State?

A. I was asked to conduct these hearings by the Special Education Committee of the Legislative Council, which I did. I might say this, that the Special Education Committee

was ordered to report back its findings of fact and conclusions to the full Legislative Council prior to the convening of the Arkansas Legislature in January of 1959. Those findings of fact and conclusions were reduced to writing, adopted by the Council and a copy thereof distributed to each member of the Arkansas Legislature.

Q. Then can you testify that these documents were part of the official records available to the Legislature during the Session of the 1959 General Assembly?

A. They were.

Q. Without going into detail, will you please state for the Court the conclusions reflected by the official records of the State of Arkansas?

Mr. Williams: If the Court please, I would like to object on the grounds that that is not the best evidence; that the [fol. 128] documents themselves are the best evidence and they should not be admitted.

Judge Sanborn: We'll receive it subject to objection.

A. I quote here from the conclusions of the Special Education Committee of the Legislative Council of the State of Arkansas. These findings of fact and conclusions were presented to the Arkansas Legislature and is in the official House Journal of the Arkansas Legislature of 1959, and I quote. This is the conclusion: "The basic question presented for determination by this Committee is, has there been subversion present in Arkansas which has encouraged racial unrest? It is a matter of common knowledge that Communism thrives where strife, tension, turmoil and chaos is present. Arkansas became a State of the Union in 1836. Peace, progress and tranquility marked the attitude of all our peoples for the next 122 years. This Committee found that the incident which occurred at Little Rock on September 2, 1957, was not something that just happened overnight. It was planned, schemed, calculated and had as its motivating factor the International Communist conspiracy of world domination squarely behind the entire shocking [fol. 129] episode. The people of Arkansas are basically men of good will. Communism heretofore has always been something that happened elsewhere, but the record reflects that for a number of years, an almost incredible number of

Communists, pro-Communists, fellow-travelers, dupes, and those who make a career out of being duped, have flitted in and out of Arkansas, and while here they sowed the seeds of dissension and discord. The Committee has wondered who sent for Clarence Laws, discredited field representative of the NAACP and who was discharged from the Army for security reasons. Who sent for Dr. Verne McDaniel, protege of the notorious Charles Vermillion who travels in harness with such Communists as Audrey Williams, Abner W. Berry, James A. Brotsky, and who sent for Grace and Lee Lorch, identified Communists, and who paid Clarence Laws for his work in Arkansas? In answering these questions, the Committee learned which individuals actively worked for a political party whose candidate would not sign a non-Communist affidavit; that known Communists Farmer and Pushkarsky worked in such close accord with the candidate and the above individuals as makes incredible a claim of innocence. One of these individuals was the State President of the NAACP and her husband who has been a National Director of an organization [fol. 130] which is a successor to an organization listed as subversive for a number of years. To answer these questions, one need merely read the transcript of the sworn testimony produced in public at the three-day hearing. The testimony under oath and the documentary evidence introduced in connection therewith makes it apparent that there has been and now is subversion present in the racial unrest in our State. The Committee is convinced that the racial unrest in Arkansas was deliberately planned by the Communist Party as part of the directive handed down by Moscow in 1928. The Communist apparatus has used many organizations in our State, some of them have been found subversive by appropriate governmental instrumentalities. Others include in their officers and directors those individuals who have been cited as aiding and supporting Communists or Communist-front organizations. We found it noteworthy that these organizations, infiltrated with Communists and pro-Communists, had actually supported racial unrest in Arkansas. They tried and were successful in making Little Rock a world-wide incident. From the evidence introduced at the hearings, it is quite apparent * * * that

the Little Rock incident is certainly another link in the chain [fol. 131] of created incidents designed for its benefit alone which was mapped out four decades ago. The Committee further finds, based on credible evidence from the files of the House Un-American Activities Committee, the United States Attorney General's subversive list, the Senate Internal Security Subcommittee and others, that many of the top officers of the National NAACP have been cited numerous times for aiding and abetting Communists or Communist-front organizations. These top officials have sent individuals of very questionable loyalty to our Government to Arkansas as their paid employees. In turn, they met with local officials of the NAACP and planned the events which culminated in the so-called "Little Rock Incident". We believe that the NAACP is and has been sympathetic towards Communist causes and that the goal of the Communist is not to help the Negro as such, but merely to use him, and in that desire to use the Negro we find that the Communists have always tried to infiltrate organizations attractive to the Negro race. The Committee has become aghast—well the rest is about the Press—I would like to read the final conclusion. The conclusion was this, Your Honors, the NAACP appears to have been heavily infiltrated with subversives and, wittingly or unwittingly, is now a captive of the Communist apparatus." That's all.

[fol. 132] COLLOQUY BETWEEN COURT AND COUNSEL

Judge Henley: The Court would like to ask the Attorney General a question.

Mr. Bennett: Yes, sir.

Judge Henley: Has this material from which you have just read—that is the findings and conclusions—have they been adopted by the Legislature of the State of Arkansas as findings and conclusions of the Legislature?

Mr. Bennett: They were findings and conclusions of the Legislative Council, Your Honor.

Judge Henley: All right.

Mr. Williams: I would like to move that the testimony, and especially the readings of Mr. Bennett, be stricken from the record on the basis that they are hearsay and not the best evidence.

Judge Sanborn: We'll take the Motion under advisement, Mr. Williams. I might ask Mr. Bennett whether the preamble to Act 115 fairly states the attitude of the Legislature in enacting that statute?

[fol. 133] A. Well, there was a considerable vote in favor of Act 115, Your Honor. Act 115 was introduced after this finding of fact and conclusions were presented to the Arkansas Legislature. In other words, a copy of the findings of fact and the conclusions, some 32 pages, was placed on each member of the Legislature's desk. The Bill was then prepared and introduced and it passed by a considerable majority. Now, I can't testify as to what the Legislative intent was, but I do know that they had this information available to them.

Judge Sanborn: Well, I take it it was on that information that the Preamble of the Act was based. The Education Committee had found that the NAACP was a captive of the Communist Conspiracy. That's apparently about as far as the Legislature went in that connection.

Cross examination.

By Mr. Williams:

Q. During this investigation, did this Committee call any persons who were in favor of the view supported by the NAACP?

A. Daisy Bates sat in the balcony the first day and she [fol. 134] didn't volunteer to come down there and testify.

Q. I'll ask my question again, Mr. Bennett. Were any persons who were in favor of the views as expressed by the NAACP, were any of them called as witnesses to testify before this Committee?

A. I don't believe I ever discussed views favorable to the NAACP with anyone so I couldn't say who would be favorable to the NAACP.

Q. You just said Daisy Bates was. Was she called?

A. I assume she is favorable to them, she is State President. She stayed up there the first day, up in the balcony and then when we got down to other things other than the House Un-American Activities files which Congressman Oren Harris introduced, she left and didn't come back.

Q. Did you call any members of the NAACP?

A. I didn't call anybody. The Committee called them.

Q. Did the Committee call any members of the NAACP?

A. Not that I know of and no one volunteered to come forward either.

Q. Let me ask you this, the other witnesses who did appear, did they voluntarily come forward?

A. Some of them did and some of them didn't.

Q. Which did, Mr. Bennett?

A. The subpoena powers of the State of Arkansas do not [fol. 135] run outside the borders of this State.

Q. Were they invited or did they just voluntarily come?

A. Well, we had one there of your race who was a member of the Executive Committee of the Communist Party for eleven years and he volunteered to come and did come.

Q. Was he invited?

Mr. Booker: Ask him how much he was paid.

A. He was not paid.

Q. Was he invited?

A. I had talked to him prior to the time I put him on, as any attorney talks to a witness before he puts him on.

Q. Did you invite him Mr. Bennett?

A. Sure.

Judge Sanborn: Well, I don't believe Mr. Williams that that's going to be very helpful whether the witnesses were invited or whether they weren't invited.

Q. Was this witness paid?

A. Not a dime.

Q. No transportation?

A. Not that I know of.

Q. Who was this witness?

A. Manning Johnson.

Q. Where is he from?

[fol. 136] A. New York.

Mr. Williams: No further questions.

Judge Sanborn: Anything further, Mr. Friday?

Mr. Friday: The Little Rock School District has nothing further.

Judge Sanborn: May we assume then that the evidence is closed—

Mr. Williams: One other witness, Your Honor, very short.

Mr. Ramsey: I'll wait until the evidence is closed, Your Honor.

Judge Sanborn: Very well.

(Counsel for plaintiff confer.)

Mr. Williams: Plaintiffs rest, Your Honor.

RENEWAL OF MOTION TO DISMISS CERTAIN DEFENDANTS

Mr. Ramsey: Your Honor, in order that the record may be complete, on behalf of the Pine Bluff School District, Dr. John Trice, Arkansas AM&N College and Dr. Lawrence Davis, I would like to renew our Mot[illegible]n that these defen- [fol. 137] dants be dismissed in that the testimony here has failed to state a cause of action as against them. I will not labor the point with the Court, but I will say that we rely very strongly upon the United States Public Workers vs. Mitchell, 330 U. S. 75, and it's supported by the brief which we have already filed in this action.

Judge Sanborn: Mr. Booker, what's your position on that Motion?

Mr. Booker: At this time, Your Honor please, our position as to that motion is that under the rules persons similarly situated can be joined as either parties plaintiff or defendant and this is a class action.

Judge Sanborn: You claim that there are some similarly situated?

Mr. Booker: That is correct, if Your Honor please.

Judge Sanborn: Very well, we will take the Motion under submission.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Harrison: If the Court please, I would like to call attention to the fact that in the temporary restraining order there is included—interlineated—in the order "and all other [fol. 138] school districts similarly situated", and I just wonder if it's the understanding of the Court this morning

that these districts which have not been served with a subpoena in other districts in Arkansas are not a party to this litigation this morning?

Judge Sanborn: Yes. We understand that. Of course, the action is brought as a class action.

Mr. Bennett: Yes, sir, but there's 422 districts in this State, and they certainly are not before this Court this morning. There is only two of them, is our contention.

Judge Sanborn: I see.

Mr. Booker: If Your Honor please, if the Court will indulge me, it is our view that in a class action there are no territorial limits within that state and we are not limited. All of the districts are bound by it and it's for that reason that we joined Pine Bluff and sent notices to some of the others.

Mr. Harrison: Where are those others?

Mr. Booker (Continuing): We feel, if Your Honor please, that Act 10 and Act 115 will disrupt the organism [fol. 139] and organization of all school districts in the State and that we have set out enough parties plaintiff to be representative and a sufficient number of defendants to be fully representative, and we are urging that the restraining order be co-extensive with the State, for unless that is true, there may be relief in one section and no relief in another. So that's our contention.

Judge Sanborn: Well, I take it your opinion, Mr. Bennett, is that the restraining order ought to be confined only to those who have been made parties to the action?

Mr. Bennett: I might say this, Your Honor, my office does not represent any school district in Arkansas, and I merely brought that to the attention of the Court because there's 420 districts that have not been heard this morning, no service has been had on them, that is there is no evidence of service.

Judge Sanborn: We'll take that point into consideration.

Mr. Bennett: In reading the temporary injunction I didn't know what the Court meant when it said "and all [fol. 140] other school districts similarly situated".

Judge Miller: May I ask one question?

With reference to the Motion made by Mr. Ramsey—that's the members of the Board of Directors of Pine Bluff

Special District and Mr. Trice, who has testified, and then the trustees of the college there at Pine Bluff, and Dr. Davis has testified on that. Now, did I understand that the teachers of the Pine Bluff Special School District, all that desired to come back, contracts have been renewed or will be renewed?

Mr. Ramsey: They have been renewed, Your Honor.

Judge Miller: Now, what's the situation with reference to the AM&N College?

Mr. Ramsey: Their contracts do not ordinarily go out this soon. Their contracts have not been renewed. Ordinarily, I believe they go out around June or July, and the restraining order became effective prior to the time any contracts were entered into and they have not executed the contracts.

[fol. 141] Judge Miller: In other words, there has been no action taken?

Mr. Ramsey: There has been no action on it.

Judge Sanborn: Court will stand in recess until two o'clock this afternoon, and we will take up the arguments then. (Whereupon, the hearing was adjourned until two o'clock p.m.)

AFTERNOON SESSION

(Whereupon, at the hour of two o'clock p.m., the hearing in the within cause was resumed pursuant to the noon recess heretofore taken, and the following further proceedings were had:)

Mr. Booker: If the Court please, we have arrived at the point that I think—first, I should apologize on behalf of the plaintiffs for having unduly lengthened this hearing for we have arrived at the conclusion now that arguments on the legal side is probably the only thing necessary at this time and we I think have covered pretty fully in our memorandum brief the argument and, tentatively, after a conference, had an agreement with counsel that probably [fols. 142-143] they would also submit it on their briefs. Am I right, gentlemen?

Mr. Ramsey: That's correct as far as the Pine Bluff School District is concerned.

Mr. Friday: Unless the Court desires something else, that's satisfactory with us. That is all, Your Honor please.

Judge Miller: The only thing, I have not read the brief of the plaintiffs, which I understand was filed, or submitted, about last Friday; neither have I read the brief that was submitted by Pine Bluff, by Mr. Ramsey, but I imagine we can go over the briefs in conference. I know these two gentlemen—my colleagues— understand the case. I don't know whether I do or not, but I will gather it as best I can.

Judge Sanborn: The Court then will take the case under submission.

Court is in recess.

(Whereupon, at 2:10 p.m., the hearing in the above-entitled matter was closed.)

Reporter's Certificate (omitted in printing).

[fol. 143a]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

PLAINTIFFS' EXHIBIT No. 1

The Committee escorted the Governor to the House Chamber. The President of the Senate introduced the Governor of Arkansas, the Honorable Orval E. Faubus.

ADDRESS BY GOVERNOR ORVAL E. FAUBUS TO THE SECOND EXTRAORDINARY SESSION OF THE SIXTY-FIRST GENERAL ASSEMBLY DATED AUGUST 26, 1958:

FOR PRESS RELEASE 11:30 A.M., AUGUST 26, 1958

Governor Gordon, Mr. Speaker, Gentlemen of the 61st General Assembly, in Extraordinary Session assembled,

My fellow citizens—

As I have said many times in awarding Arkansas Traveler Certificates to people who had distinguished themselves

in public service, with every honor goes responsibility, with every privilege goes burdens.

This is one of the times when we, who have been honored by our fellow citizens by our election to public office, feel more heavily the responsibilities and the burdens that go with the public trust, than we do its honors and privileges.

But he who cannot carry the load through the storm, deserves little the bouquet in the sunshine.

We are here today, not through our own choice and desires, but because it is our responsibility to face up to some problems that have been forced upon us, by the unwise actions of others.

I quote from a news story of last Saturday and Sunday, because it has a definite relation to the cause which brings us here today.

> "The Supreme Court has been usurping the rights reserved to the States by the Constitution."
>
> "The Supreme Court has been making hasty, impatient decisions without proper judicial restraint."
>
> "Recent decisions raise considerable doubt as to the validity of the American boast that we have a government of laws and not of men."
>
> "The development of immense power of the Supreme Court in both state and national affairs, is second only to the increasing dominance of the national government."
>
> "It is not merely the final arbiter of the law; it is the maker of policy in many major social and economic fields. It is here that we feel the greatest concern, and it is here that we think the greatest restraint is called for."

These are not my words, nor the words of State Senator Jerry Sereeton or U.S. Senator John L. McClellan, nor of any particular States' Rights advocate. These words are in the report, adopted only last Saturday by a conference of Chief Justices of the State Supreme Courts. These eminent jurists represent all the states and two territories. This unprecedented report, strongly condemning the United

[fol. 143b] States Supreme Court in the language I have quoted above, was adopted by thirty-six favorable votes,—four and one-half times as many as the eight opposing votes.

The resolution said also:

> "This conference (of State Supreme Court Chief Justices) hereby respectfully urges that the Supreme Court of the U.S., in exercising the great powers confided to it for the determination of questions as to the allocation and extent of national and state powers—exercise one of the greatest of all judicial powers—the power of judicial self-restraint."

Let us see how this admonition fits the recent majority decision of the Eighth Circuit U.S. Court of Appeals. From that decision, I quote the following language:

> "From the practically undisputed testimony of the Boards' witnesses, we find that * * * the continued attendance of the Negro students at Central High School was achieved throughout the 1957-1958 school year by the physical presence of federal troops * * *

> "It is important to realize, as is shown by the evidence, that the racial incidents and vandalism which occurred in Central High School during the past year did not stem from mere lawlessness on the part of the white students in the school, or on the part of the people of Little Rock outside the school; nor did they stem from any malevolent desire on the part of the students or others concerned to bomb the school, or to burn it down, or to injure or persecute as individuals, the nine Negro students in the school. Rather, the source of the trouble was the deep seated popular opposition in Little Rock to the principle of integration, which, as is known, runs counter to the pattern of Southern life which has existed for over three hundred years. The evidence also shows that to this opposition was added the conviction of many of the people of Little Rock that the Brown decisions do not truly represent the law, and that by virtue of the 1956-1957 enactments, heretofore outlined, integration in the public schools can be lawfully avoided."

". . . In reaching this conclusion we are not unmindful of the admonition of the Supreme Court that the vitality of those principles 'cannot be allowed to yield simply because of disagreement with them;' here, however, as pointed out by the board in its brief, the opposition to integration in Little Rock is more than a mere mental attitude; it has manifested itself in overt acts which have actually damaged educational standards and which will continue to do so if relief is not granted."

"Appalling as the evidence is—the fires, destruction of private and public property, physical abuse, bomb threats, intimidation of school officials, open defiance of the police department of the City of Little Rock by mobs—and the naturally resulting additional expense to the District, disrupting of normal educational procedures, and tension, even nervous collapse of the school personnel, we cannot accept the legal conclusions drawn by the District Court from these circumstances."

[fol. 143c] "Mindful as we are that the incidents which occurred within Central High School produced a situation which adversely affected normal educational processes, we nevertheless are compelled to hold that such incidents are insufficient to constitute a legal basis for suspension of the plan to integrate the public schools in Little Rock."

"Accordingly, the order of the District Court is reversed, with directions to dismiss the appellee's petition."

What, then, is the substance of this ruling?

It means that to the court, integration is paramount to all other considerations.

1. That it is paramount to the purpose for which schools are established—that of educating our children. Even though education in the schools be seriously impaired, or utterly destroyed, still integration must prevail.

2. The sociological factors, upon which the original Supreme Court decision was based, have been, or will be, on

youngsters who attended school last year under the conditions described? Did the illegal use of federal troops to break a custom of three hundred years standing, create such disrespect for authority in the minds of some students, that they will have less regard for all law and authority in the future? The implications of harm to the students in this respect are almost numberless and, of course, impossible to calculate.

3. There is the matter of a rule of law that is applicable to every government that has ever existed—that the maintenance of peace and good order in time of crisis becomes and is paramount to all other rights and considerations. To my knowledge, this basic duty and law of governments everywhere, has never, until recent times, been challenged by any court.

This basic rule of law was discarded by the decisions of Federal Judge Davies last fall, and by the recent ruling of the Eighth Circuit Court of Appeals in upsetting the wise and judicious decision of Federal Judge Lemley. According to Judge Davies and the Eighth Circuit Court, it matters not how bad the conditions that may exist; it matters not if a hundred people are slain in the streets of the corridors of a school; it matters not how great the destruction of property; it matters not whether the parents know that their children may return home grievously wounded because of disorders, or whether they may return at all. Integration is paramount to these considerations.

To these extreme views, I cannot subscribe. I now quote from a statement made by me last September:

> "Maybe Negro leaders and white integrationist leaders, and even Federal Judge Davies, are willing to sacrifice the lives of a certain number of people in this community in order to take one more step toward final and complete integration of the schools. Let that be their philosophy—it is not mine. The price is too high, and the danger too great."

I do not challenge the right of the NAACP to attempt to bring about total and complete integration of the races. Regardless of whether it is good or bad for them, or for others, they still have that right.

[fol. 143d] As evidence of my good faith in my attitude expressed toward peaceful integration according to the will of the people, I cite again the following from a previous statement by me:

"The integration of all forms of transportation in Arkansas."

"The integration of institutions of higher learning, including the University of Arkansas, the School of Medicine (Medical Center in Little Rock), and five state-supported colleges."

"The peaceful integration of more public schools in Arkansas, than have been integrated in seven other Southern States combined, including the so-called moderate States of North Carolina, Tennessee, and Florida."

"The placing of Negroes in party posts, and also public positions, both elective and appointive."

These steps, along with other peaceful progress in the field of integration, should prove to anyone and everyone, that whatever the term, "deliberate speed" may mean, Arkansas has attained it more quickly, or approached it more closely, than any other state with a comparable problem.

My disagreement is with the methods now being employed, and the unseemly haste that is being demanded.

There is a law of life that can never be violated, or hurried, without great harm to all concerned, and that is the law of evolution in relation to social and political change.

An excellent example is the long struggle to gain the right of franchise for all people of this republic. It lasted from the founding of the English Colonies until the granting of woman sufferage in 1920. It is significant that it came by the adoption of a Constitutional Amendment by the states, and not by a federal Court decree.

Chief Federal Judge Gardner aptly phrased this rule in his memorandum of dissent to the Court of Appeals ruling when he wrote:

"Such changes, if successful, are usually accomplished by evolution rather than by revolution, and time, patience, and forbearance are important elements in effecting all radical changes."

Judge Gardner further stated:

"The action of Judge Lemley was based on realities and on conditions, rather than on theories."

The case for peaceful, evolutionary progress in the field of social change, as opposed to change by law, court edict, or force, was most clearly and concisely stated by the great writer, Dorothy Thompson, in a column dated New York, September 11, 1957:

"For no law can operate to achieve its desired ends if it runs counter to the existing state of consciousness and conscience of the community. A law to be effective must be respected. To be respected, the overwhelming majority must believe it to be right. Respect is not created by statute. No one can respect what he firmly believes to be wrong. Where a law is in harmony with public standards, its upholders (the police) find allies in the people. Where the law is not thus in harmony, the police appear as public enemies. Then *peaceable enforcement becomes impossible.*

"If a Negro child has to fight his way into a White school, the opposite situation has been created, and [fol. 143e] White and Negro alike, each reflecting the feelings of the adult communities from which they come, are educated in hatred and feelings of aggression. What good does 'the protection of the law' do a child who is scorned and ostracized by his mates?" . . .

And I may add to this quotation, that there is no clear cut federal statute regarding the integration of schools. If there were, it would be unconstitutional, for the authority to control public education has never been delegated by the states to the federal government. It must be remembered that the federal government is a creature of the states and possesses only those powers delegated to it by the states.

Surely Judge Gardner drew upon all the wisdom of his many years of experience when he penned this summary of our problem, coupled with his admonition for caution:

> "For centuries there had been no intimate social relations between the white and colored races in the section referred to as the South. There had been no integration in the schools and that practice had the sanction of a decision of the Supreme Court of the United States as constitutionally legal. It had become a way of life in that section of the country and it is not strange that this long-established cherished practice could not suddenly be changed without resistance."

Last September when I acted to preserve the peace and domestic tranquility in the Little Rock area, I charted my course on the law as declared by one of the most eminent and respected men to ever serve on the United States Supreme Court—Justice Oliver Wendell Holmes. Almost fifty years ago, in the case of Moyer v. Peabody, (53 L. ed. 411) he reviewed the duty of a governor to maintain the peace in his state, and this is what that great judge had to say on the subject:

> "When it comes to a decision by the head of the state upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process."

With this background, and the tense uneasiness, deep concern, and genuine fear that exists in this community and state at this time, we come to the immediate problem.

The problem is how to preserve the peace and prevent the disorder and violence, which appears certain to occur with the forcible integration of the Little Rock school.

The NAACP objective of the moment is the successful integration of Central High School by any means, including force. However, the plan already approved by the Board and the Federal Court, calls for the complete integration of all Little Rock schools. In the recent conference with the school board and the superintendent, it was stated that

there was no target date for the integration of Hall High, but the plan calls for its integration. All Little Rock schools will be integrated, and in the near future, East Side Junior High, now all white, will be integrated with approximately fifty percent Negro students and fifty percent white students.

This information was obtained from the superintendent, the three school board members present, and their attorneys, and received by me, two of my attorneys, and Lt. Governor Nathan Gordon, President Pro Tem of the Senate, Lee Bearden, and Speaker of the House, Glenn Walther. [fol. 143f] To preserve the peace, prevent disorder and violence, and retain for the citizens of our state, the basic right to control our own affairs through the democratic processes, I recommend to the members of the House and Senate, for your consideration the following measures:

A measure providing for the closing of a school or schools, for any of the following reasons:

First: In order to maintain the peace against actual or impending violence which endangers the citizens, students, teachers, and others, and to provide for the safety of buildings and property.

Second: Where a school or schools has been ordered to integrate by any court, and federal force is employed on or about the grounds to enforce the order.

Third: Whenever it is determined that a general suitable and efficient educational system cannot be maintained in any school district because of the integration of the races.

This measure also provides for the calling of an election within thirty (30) days after the closing of any school for any of the above reasons. At the election, the people of the district may vote on the question of keeping the school segregated or integrated. The election would be held in the usual manner by the same officials as would hold other school elections.

If the people of the district vote to integrate the school, it will be opened on an integrated basis, otherwise it will be kept closed, and other provisions must be found for the education of the children who would otherwise attend such school.

A measure to provide for the withholding of certain state funds from any school closed under the provisions of the Act. This act also provides for each child's proportionate share of school funds to follow the student to any other school in this state in which he may choose to enroll. This can be another school within the district, a school in another district, or a private non-profit school. This measure will not change in any way, the method now used in allocating state funds or the funds of any school district under the Minimum Foundation Program Law.

A measure which provides for the enrollment and attendance of a student in any other school in the same district, or the school of another district, under certain conditions.

A measure which provides that no student shall ever be denied the right to enroll in and receive instruction in any course in any public school in the state by reason of his or her refusal to attend classes with a student of another or different race.

A measure which provides for an appropriation for the Chief Executive in the carrying out of his duties under this program, and to defray the expenses of school district elections called by the Governor.

A measure which provides for the postponement of the opening date of certain high schools from September 2 to September 15.

Gentlemen, may I say to you in the deepest humility and sincerity that it is with exceeding regret that I have determined this extraordinary session of the Legislature to be necessary.

We must do whatever is possible to protect the rights of our people, and preserve for them and their posterity, the democratic processes of government which we all cherish so much.

This battle for States' Rights and Constitutional Government is not of our choosing, as has been the case many times in the history of the past; the issue has been forced upon us and we must either choose to defend our rights [fol. 143g] against those who would usurp them, or else surrender.

We, as public servants, elected by the vote of our people, would be unworthy of the confidence reposed in us, and of the honor bestowed upon us, should we be unwilling to face the issues as free men should, and do everything in our power that is possible to be done.

I hope that no one of you will be influenced by the words of the weak and the fearful, and that no one of you will be misled by the mistaken views of those who would surrender all the rights and privileges we have enjoyed, to an all powerful federal government in the unwise course of action which it pursues at the present moment. The issues which must be faced and decided by free men have never been easy, and the tasks which must be performed by a people who would remain free, have always been difficult.

This is not a half serious problem, and it cannot be met with have measures. The bills I have recommended to you are the product of many fine and able minds, and represent a great deal of hard work. I ask that you consider these measures as a package program.

And now, in conclusion, to you, as men of responsibility and good judgement, I leave these words of caution:

Any remark on the floor of either the House or Senate during your deliberations, will be charged to some extent, to the people of our state. I would, therefore, caution you to be both deliberate and circumspect in your remarks and actions. It is not a time for gestures and posturing, and but rather a time for calm and deliberate speech and action.

The eyes of the nation are upon us: and the hopes, and the prayers of millions of our fellow citizens of our sister states are with us in our efforts.

With deep and abiding faith in our Creator, and in the people of this republic, I recall these words from our National Anthem:

Then conquer we must, for our cause, it is just: And this be our motto, "In God is our trust"

The Committee previously appointed escorted the Governor from the House Chamber.

The President of the Senate declared the Joint Session adjourned at 12:20 P.M.

The Speaker called the House to order

HOUSE OF REPRESENTATIVES

SIXTY-FIRST GENERAL ASSEMBLY
SECOND EXTRAORDINARY SESSION

REPORT ON COMMITTEE ON RULES

We, your committee to whom was referred the question of the withdrawal of the resignation of Jack S. Oakes, representative of Woodruff County, beg leave to report that we have investigated the matter and find that there was no actual valid resignation of Representative Oakes.

We, therefore, recommend the continued service of him and find that Jack S. Oakes is the duly elected, qualified and acting representative of Woodruff County, Arkansas, and has been continuously since January 14, 1957.

Respectfully submitted,

COMMITTEE ON RULES

By: C. C. Hollenworth
Ray S. Smith, Jr.

[fol. 143h] Secretary's Certificate (omitted in printing).

[fol. 143i] REPORTER'S CERTIFICATE (omitted in printing).

[fol. 144] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

[Title omitted]

ORDER EXTENDING TEMPORARY RESTRAINING ORDER—
May 25, 1959

On this day the Court having heard the evidence in this cause and having taken the case on submission Doth Order

that the temporary restraining order heretofore entered herein be, and the same hereby is, extended until further notice.

This the 25th day of May, 1959.

John B. Sanborn, United States Circuit Judge; John E. Miller, United States District Judge; J. Smith Henley, United States District Judge.

[fol. 145] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

Civil No. 3708

B. T. SHELTON, et al., Plaintiffs,

—v.—

ED. I. MCKINLEY, JR., et al., Defendants.

MEMORANDUM OPINION AND JUDGMENT—June 8, 1959

PER CURIAM:

This is a class action in which the plaintiffs[1] seek declaratory and injunctive relief against the enforcement of Act 10 of the Second Extraordinary Session of the Arkansas Legislature, held in August, 1958, and of Act 115 of the regular 1959 session of that body. It is claimed that those statutes

[1] The plaintiffs are: B. T. Shelton, a Negro school teacher employed in the Little Rock public school system; the Arkansas Teachers Association (ATA), a professional organization, the membership of which consists of Negro school teachers and college professors in the State of Arkansas; and T. W. Coggs, the Executive Secretary of ATA. The plaintiff, Shelton, sues for himself and others similarly situated; and the ATA and Coggs are suing for the benefit of members of the Association.

are violative of the First and Fourteenth Amendments to the Constitution of the United States. Upon the filing of the complaint, a statutory court of three judges was convened, and the case has been tried to that court.

Act 10 provides in substance that no person shall be employed or elected to employment as a superintendent, principal or teacher in any public school in Arkansas, or as an instructor, professor or teacher in any public institution of higher learning in that State until such person shall have submitted to the appropriate hiring authority an affidavit [fol. 146] listing all organizations to which he at the time belongs and to which he has belonged during the past five years, and also listing all organizations to which he at the time is paying regular dues or is making regular contributions, or to which within the past five years he has paid such dues or made such contributions. The Act further provides, among other things, that any contract entered into with any person who has not filed the prescribed affidavit shall be void; that no public moneys shall be paid to such person as compensation for his services; and that any such funds so paid may be recovered back either from the person receiving such funds or from the board of trustees or other governing body making the payment. The filing of a false affidavit is denounced as perjury, punishable by a fine of not less than five hundred nor more than one thousand dollars, and, in addition, the person filing the false affidavit is to lose his teaching license.

Section 1 of Act 115 makes it unlawful for any member of the National Association for the Advancement of Colored People (hereinafter called NAACP) to be employed by the State of Arkansas or any of its subdivisions, or by any school district, and declares that the prohibition of such employment shall continue so long as membership in the NAACP exists. Section 2 authorizes employing agencies to require from any employee an affidavit as to whether he is a member of the NAACP and a refusal to furnish the affidavit is made a ground for dismissal from employment.

Section 3 of the Act provides in substance that any person discharged from or declared ineligible for public employment on account of NAACP membership may, within four months of such dismissal or declaration, petition the cir-

cuit court for an order to show cause why a hearing on the charges against him should not be had; that until the final judgment on such hearing the dismissal or declaration [fol. 147] of ineligibility shall be stayed; that the hearing shall consist of the taking of evidence with the right of cross-examination, and that the burden of sustaining the validity of an order of dismissal or declaration of ineligibility by a fair preponderance of the credible evidence shall be upon the person making such dismissal or declaration of ineligibility.

The operative sections of this statute are preceded by a preamble, the gist of which is that the NAACP has been guilty of creating racial strife and turmoil in the State of Arkansas; that it has threatened progress in race relations in the State; that it has striven to stir up dissatisfaction and unrest among Negroes, and that because of its purposes and activities membership therein is incompatible with the "peace, tranquility and progress that all citizens have a right to enjoy." The preamble also contains a recitation that the Special Education Committee of the Arkansas Legislative Council[2] has found that the NAACP "is a captive of the international communist conspiracy".

When the suit was originally filed, B. T. Shelton was the only named plaintiff, and the original defendants were the Little Rock, Arkansas Special School District, the members of the Board of Directors of that District, and the Superintendent of Schools. Subsequently, an amended complaint was filed adding ATA and its executive secretary as plaintiffs, and adding as defendants the Pine Bluff, Arkansas, Special School District, the members of the School Board of that District and the Superintendent of Schools, and the Board of Trustees and President of the Arkansas A. M. & N. College for Negroes.

[fol. 148] Also named as defendants were Bruce Bennett, Attorney General of the State of Arkansas, and Frank Holt, Prosecuting Attorney of the Sixth Judicial Circuit of Arkansas, which includes Little Rock. Both the attorney

[2] The Arkansas Legislative Council is an agency of the Arkansas Legislature which functions during interims between sessions, makes studies of legislative problems, and reports thereon; to the Legislature.

general and the prosecuting attorney filed motions to dismiss, and at the commencement of the trial it was agreed that the complaint might be dismissed as to them without prejudice. Also named as members of the Pine Bluff School Board were Ralph Mitchell, Jr., and J. C. Langley. It developed that one of these gentlemen had never been a member of the Board, and that the other had resigned prior to the filing of the suit; and it was agreed that the case might be dismissed as to them.

Reduced to essentials, the claim of the plaintiffs is that the two statutes in question deprive the plaintiff Shelton and others similarly situated, and the members of ATA of liberty and property without due process of law; that they deny them the equal protection of the law; that they infringe upon their rights of freedom of speech, freedom of the press, freedom of assembly and association and to petition for redress of grievances, and deny them privileges and immunities of citizens of the United States. It is further claimed that Shelton and the plaintiff class are threatened with irreparable injury and have no adequate remedy at law.

In their answers the defendants deny the claim of the plaintiffs that the statutes are unconstitutional; they further contend that this court is without jurisdiction, and that this is not a proper class action. In the alternative, they ask that proceedings herein be stayed until the two statutes can be construed by the Arkansas state courts.

[fol. 149] It appears that plaintiff Shelton has been employed as a teacher in the Little Rock Public School System for a number of years, and that he is a member of the NAACP; that on April 3 of the current year he and other teachers in the Little Rock system were called upon to submit the affidavits required by Act 10; that he declined to do so on the ground that the statute violated his constitutional rights; and that subsequently he received a letter signed by three members of the Little Rock School Board advising him that his contract had not been renewed for the 1959-60 school year and would not be renewed. By reason of a somewhat peculiar situation that existed with respect to the Little Rock School Board when the suit was filed and on the day of trial, which situation we find it un-

necessary to detail, there is some uncertainty with respect to the exact status of Shelton's contract and those of certain other teachers who declined to submit the Act 10 affidavits. It has been stipulated, however, that the Little Rock School Board will act in conformity with ruling State statutes, and it is plain that if those statutes stand, Shelton will inevitably feel their impact if he has not already done so. Thus, we are satisfied that Shelton's situation presents a case or controversy between him and the Little Rock School District with respect to which this court has jurisdiction.

The claim that this is not a proper class action calls for no extended comment, since it is now well settled that a suit of this kind, while not a "true class action" can be maintained for the benefit of the named plaintiff and "others similarly situated" under the provisions of Rule 23, F. R. C. P., 28 USCA. (See the full discussion of such an action and of the effect of a judgment therein contained in 3 Moore's Federal Practice, 2d Ed. pp. 3442-3450, 3455-56, and 3465-68.)

[fol. 150] With regard to the contention that this court should not proceed herein until the statutes have been construed by the State courts, we, of course, respect the doctrine of "equitable abstention", as it is sometimes called, and it has been applied in this district not infrequently. However, this doctrine is discretionary in its application, not jurisdictional. We see no problems of statutory construction in this case which would move our discretion to stay proceedings as the defendants desire. Cf. NAACP v. Patty, DC, Va., 159 F.Supp. 503; see also dissenting opinion of Judge Parker in Bryan v. Austin, DC, S.C. 148 F.Supp. 563, 567. Moreover, this is contract time with the school districts in Arkansas. Both teachers and directors of those districts need to know where they stand with respect to both acts. Should proceedings herein be stayed, inevitably there would be undesirable delay and confusion likely to be accompanied by a multiplicity of suits in various sections of the State. Accordingly, we are of the view that the public interest calls for a determination of the Constitutional question presented by the record.

While there is certain language in the complaint that may indicate that the plaintiffs feel, at least to a certain extent,

that the two statutes must be read together, we feel that they should be considered separately. Cf. Garner v. Los Angeles Board of Public Works, 341 U.S. 716, 720. And in view of certain decisions of the Supreme Court presently to be mentioned, we are satisfied that Act 10 is constitutional. On the other hand, it is clear that Act 115 is unconstitutional.

Act 10, unlike Act 115, does not make past or present membership in any organization a ground for discharge of, or for refusal to employ a school teacher or college pro- [fol. 151] fessor. It simply requires the local school boards and the governing bodies of institutions of higher learning to ascertain the affiliations of their respective faculties. Once that information has been furnished, so far as Act 10 is concerned, the local board or the governing body of a college is free to take any action it may choose with respect to the employment status of a given individual.

A public employer has a right to know the organizations to which its employees, including school teachers, belong or have belonged, or to which they are making or have made financial contributions. This right has been recognized in Garner v. Board, supra; Adler v. Board of Education of the City of New York, 342 U.S. 483; Beilan v. Board of Education, School District of Philadelphia, 357 U.S. 399; and Lerner v. Casey, 357 U.S. 468.

In the Garner case the Court, in upholding a requirement that public employees sign an affidavit revealing whether they had been members of the Communist Party or of the Communist Political Action Association, and if so setting forth the dates and periods of membership, said:

> "We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to fitness and suitability for the public service. Past conduct may well relate to present fitness; past loyalty may well have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment. . . . " (341 U.S. at 720.)

In Adler v. Board of Education of the City of New York, supra, there was before the Court a challenge of the New York statutes designed to clear subversives from employment in the public school system. It was claimed that those statutes violated the freedom of speech and assembly of persons employed or seeking employment in the public schools. [fol. 152] The Court said: "It is clear that such persons have the right under our law to assemble, speak, think and believe as they will: Communications Assn. v. Douds, 339 U.S. 382. It is equally clear that they have no right to work for the State in the school system on their own terms. United Public Workers v. Mitchell, 330 U.S. 75. They may work for the school system upon the reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere . . ." (342 U.S. at 492). A little further on in the opinion, the Court, after announcing that it was adhering to the Garner case, supra, went on to state:

". . . A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted. One's associates, past and present, as well as one's conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one's reputation has been determined in part by the company he keeps. In the employment of officials and teachers of the school system, the state may very properly inquire into the company they keep, and we know of no rule, constitutional or otherwise, that prevents the state, when determining the fitness and loyalty of such persons, from considering the organizations and persons with whom they associate." (342 U.S. at 493.)

Garner and Adler were both adhered to less than a year ago in Beilan v. Board of Education, supra, wherein the court upheld the discharge of a school teacher on account of his refusal to answer questions put to him by his superintendent relative to his communist affiliations and activities. The Court said:

> [fol. 153] "By engaging in teaching in the public schools, petitioner did not give up his right to freedom of belief, speech or association. He did, however, undertake obligations of frankness, candor and cooperation in answering inquiries made of him by his employing Board examining into his fitness to serve it as a public school teacher." (357 U.S. at 405.)

Further on in the same opinion the Court said that there was no requirement in the Federal Constitution that a teacher's classroom conduct be the sole basis for determining his fitness, and that such witness "depends on a broad range of factors." (357 U.S. at 406.) In discharging their annual tasks of selecting new teachers and determining which of the old ones should be retained in employment, Arkansas school boards and college trustees are not concerned alone with the professional training or instructional competency of their employees or applicants for employment, or even with their loyalty to this country. While membership in a subversive organization, such as the Communist Party, is, of course, a relevant factor bearing upon a person's fitness for employment as a school teacher or college instructor, other factors are relevant as well. A school board in undertaking to select teachers is entitled to take into consideration not only an applicant's com-

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In considering this case it is important to bear in mind that Arkansas, unlike certain other States, does not have any civil service system for its public school teachers. Those teachers usually are hired on a year-to-year basis, and while a wrongful discharge during a school year in breach of contract is actionable, the only specific job security that a teacher has beyond the end of a year is the statutory provision that if a teacher is not notified within 10 days after the end of a school year that his contract has not been renewed, it is automatically renewed for the following year. Ark. Stats. 1947, Section 80-1304(b); Wabbaseka School District No. 7 v. Johnson, 225 Ark. 982, 286 SW 2d 841.

petency and loyalty, but also his or her personality, habits and manner of living, and social, professional, and political background and affiliations, to the end that it may select not only competent teachers, but those whose employment or retention in employment is to the best interest of all concerned.

[fol. 154] This does not mean, of course, that the Legislature can require a local school district or institution of higher learning to make inquiries of its employees or applicants for employment that are wholly irrelevant to their suitability for employment. Thus, in National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449, cited by the plaintiffs, it was held that the Association could not be compelled by a State court to disclose its membership lists in connection with an action brought by the State on account of its alleged noncompliance with the Alabama statutes dealing with foreign corporations. The Court said: " . . . The issues in the litigation commenced by Alabama . . . were whether the character of petitioner and its activities in Alabama had been such as to make petitioner subject to the registration statute, and whether the extent of petitioner's activities without qualifying suggested its permanent ouster from the State. Without intimating the slightest view upon the merits of these issues, we are unable to perceive that the disclosure of the names of petitioner's rank-and-file members has a substantial bearing on either of them". (357 U.S. at 464.)

We think that the information required by Act 10 is relevant. The fact that some educators and members of the public may feel that this requirement is unwise, or unnecessary or even insulting does not mean that the statute is unconstitutional. Those are considerations of the legislative, not the judicial branch of the government. We hold, however, that the mere failure of a teacher who was a member of the National Association for the Advancement of Colored People, to furnish the affidavit required by Act 10 while Act 115 was ostensibly in effect, thereby making himself ineligible for public employment by the terms of the latter Act, did not and does not compel or justify his discharge or render him ineligible for re-employment.

[fol. 155] Taking up Act 115, there can be no question that the Act makes any member of the NAACP ineligible for

public employment in the State of Arkansas. Section 3 of the Act, which gives to any person dismissed from or declared ineligible for employment under the provisions of the Act, a right to petition for an order to show cause why a hearing on such charges should not be had, does not change or modify the command of the Act. That section gives one who was dismissed or denied employment on the ground that he was a member of the NAACP, and who claims that he was not a member, an opportunity to obtain a hearing on that issue alone. Once membership is established, then discharge or a declaration of ineligibility automatically follows. Further, by the terms of the Act one who gives public employment to a member of the NAACP is subject to a fine of not more than $100 for each such offense.

Under the Fourteenth Amendment to the Constitution of the United States, as construed in Wieman v. Updegraff, 344 U.S. 183, and Slochower v. Board of Higher Education of the City of New York, 350 U.S. 511, the statute is clearly unconstitutional since it makes mere membership in the NAACP a ground for dismissal from or a declaration of ineligibility for public employment, regardless of whether the employee or applicant involved had any knowledge of or sympathy with the aims and purposes of the organization, as declared by the Legislature, or had actively participated in the activities found by the Legislature to be anti-social and undesirable, or whether he was completely innocent of such knowledge, sympthy or participation and had joined and was desirous of maintaining his membership in the Association out of sympathy with its publicly announced objectives which are clearly lawful.

[fol. 156] Even if the recitals of the preamble to the statute to the effect that the NAACP is devoted to the creation of racial unrest and turmoil are taken at face value, there is no declaration that the purposes and activities of the organization are designed to overthrow the government or that they are violative of any statute.[4]

[4] See Judge Parker's discussion of a similar preamble to the South Carolina statute involved in Bryan v. Austin, supra. With regard to the statement that the NAACP is a captive of the communist conspiracy, it is to be noted that the Legislature did not

While public employing agencies have a wide if not unlimited discretion in selecting their employees, it does not follow that the Legislature can by statute require such agencies to apply a wholly arbitrary and discriminatory standard in hiring and firing. On the contrary, Wieman v. Updegraff and Slochower v. Board, both supra, establish that such cannot be done.

This Court, of course, cannot do otherwise than follow the decisions just mentioned. Wieman v. Updegraff involved the constitutionality of a statute of Oklahoma which required each state officer and employee, as a condition of his employment, to take an oath stating that he was not, and had not been for the preceding five years a member of any organization listed by the Attorney General of the United States as "communist front" or "subversive" and which statute, as construed by the State Supreme Court, [fol. 157] barred persons from state employment solely on the basis of membership in such organization, regardless of their knowledge concerning the activities and purposes thereof. By an opinion in which all the Justices concurred, the Supreme Court held that the Act in suit, as thus construed, violated the Due Process Clause of the Fourteenth Amendment by making persons ineligible for public employment solely on the basis of organizational membership, regardless of their knowledge concerning the organizations to which they had belonged. In so doing the Court distinguished its prior decisions involving state legislation aimed at safeguarding the public service from disloyalty, namely, Garner v. Board of Public Works, supra; Adler v. Board of Education, supra, and Gerende v. Board of Supervisors, 341 U.S. 56.

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find that such was a fact, but simply stated that a committee of the Arkansas Legislative Council had so found; and while the Attorney General of Arkansas testified at the trial of this case that the findings of that committee were before the Legislature when it adopted Act 115, he did not testify that the Legislature itself had ever adopted those findings as its own. Thus, it is unnecessary for us to decide whether the Legislature had a right to make such a finding, or to determine what effect should be given to it had it in fact been made.

In the course of its opinion the Court said:

> "There can be no dispute about the consequences visited upon a person excluded from public employment on disloyalty grounds. In the view of the community, the stain is a deep one; indeed, it has become a badge of infamy. Especially is this so in time of cold war and hot emotions when 'each man begins to eye his neighbor as a possible enemy'. Yet under the Oklahama Act, the fact of association alone determines disloyalty and disqualification; it matters not whether association existed innocently or knowingly. To thus inhibit individual freedom of movement is to stifle the flow of democratic expression and controversy at one of its chief sources. We hold that the distinction observed between the case at bar and *Garner*, *Adler* and *Gerende* is decisive. Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power. The oath offends due process." (344 U.S. at 190-191.)

And in Slochower v. Board of Education, supra, it was said:

> "... In Wieman v. Updegraff, 344 U.S. 183, we struck down a so-called 'loyalty oath' because it based employability solely on the fact of membership in certain organizations. We pointed out that membership itself may be innocent and held that the classification of innocent and guilty together was arbitrary. This case rests squarely on the proposition that 'constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary and discriminatory'. 344 U.S. at 192." (350 U.S. at 556.)

[fol. 158] See also Sweezy v. New Hampshire, 354 U.S. 234, 242, 251.

Since the fact of association alone cannot be used to determine disloyalty or disqualification, it is obvious that mere membership in the NAACP cannot be made a bar to public employment.

While the plaintiffs are entitled to a declaratory judgment to the effect that the State of Arkansas cannot con-

stitutionally require that a person be discharged from public employment or be declared ineligible therefor merely because he belongs to the NAACP, from which it necessarily follows that public hiring officials cannot be successfully prosecuted for declining to follow such a standard, it does not follow that this Court, as a court of equity, can compel any school board to hire a person as a teacher, or to retain him in its employment, or to forbid it to discharge him. This is true because of the well settled principle that an equity court, at least in the absence of a statute or of a situation where an employee has a vested right to or interest in his employment, will not interfere by injunction with the power of an employer to determine whom he will employ or retain in his employment. As we have seen, school teachers in Arkansas have no vested rights in their jobs, and no right of re-instatement if wrongfully discharged. If a teacher is discharged in violation of his contract, his remedy is an action for damages. Such being the case, we do not believe that injunctive relief is appropriate here, nor, from a practical standpoint, do we think it necessary at this time.

It Is, Therefore, by the Court Considered, Ordered, Adjudged and Decreed:

[fol. 159] 1. That without objection the motions to dismiss filed herein by Honorable Bruce Bennett, Attorney General of the State of Arkansas, and by Honorable Frank Holt, Prosecuting Attorney of the Sixth Judicial Circuit of the State of Arkansas, are granted without prejudice.

2. That without objection the motions to dismiss filed by the defendants Ralph Mitchell, Jr. and J. C. Langley are granted.

3. That to the extent that the plaintiffs seek declaratory and injunctive relief with respect to Act 10 of the Second Extraordinary Session of the 61st General Assembly of the State of Arkansas, the complaint and amended complaint are without merit and are dismissed with prejudice.

4. That the prayer of the plaintiffs for declaratory relief with respect to Act 115 of the regular session of the 62nd General Assembly of the State of Arkansas be, and

the same hereby is granted, and that said statute be, and it hereby is, adjudged to be invalid and unenforceable as contravening the Fourteenth Amendment of the Constitution of the United States.

Dated this 8th day of June, 1959.

John B. Sanborn, United States Circuit Judge.
John E. Miller, United States District Judge.
J. Smith Henley, United States District Judge.

[fol. 160] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

[Title omitted]

MOTION FOR STAY OF JUDGMENT PENDING APPEAL—
Filed June 15, 1959

Come the original Plaintiffs, now the Appellants in the above-captioned cause, in their Motion for Stay of Judgment Pending Appeal, stating:

The Appellants state that they are in good faith appealing paragraph three (3) of the judgment in said cause pertaining to a dismissal of the complaint, and the amended complaint as same has respect or pertains to Act 10 of the Second Extraordinary Session of the 61st General Assembly of the State of Arkansas, and they are ready, willing and able to process said Appeal to a conclusion, and will abide the orders and rules of this Court in processing said Appeal.

That the Appellants respectfully state that it is necessary, in order to prevent irreparable damage or continuation of irreparable damage, that this Court grant to the Appellants the relief herein prayed for.

Wherefore, the Appellants pray that the Court make and enter an appropriate Order herein staying the judg-

ment pending the appeal, and a continuation of the restraining order in the above entitled action until the further order of the Court, and for all further relief.

J. R. Booker, Harold B. Anderson, Thad D. Williams, Christopher C. Mercer, Jr., Attorneys for Appellants.

State of Arkansas)
County of Pulaski)

The undersigned Harold B. Anderson, states that he is one of the attorneys of record for the Appellants in the above entitled action, and the facts as set out in the Motion for Stay of Judgment, and the granting of a restraining order, are true and correct.

Harold B. Anderson

Subscribed and sworn to before me this the ..... day of ....., 1959.

....., Notary Public.

[fol. 161] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

Civil Action No. 3708

B. T. SHELTON, for himself and others similarly situated; ARKANSAS TEACHERS ASSOCIATION, on its own behalf, and on behalf of its members; T. W. COGGS, as Executive Secretary of the Arkansas Teachers Association, Plaintiffs,

v.

ED. I. MCKINLEY, JR., et al., Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 25, 1959.

I.

Notice is hereby given that B. T. Shelton, Arkansas Teachers Association, Inc., and T. W. Coggs, Executive Secretary of the Arkansas Teachers Association, plaintiffs herein, appeal to the Supreme Court of the United States from that portion of the order and judgment of the court below wherein the court denied declaratory injunctive relief to plaintiffs in respect to Act 10 of the Second Extraordinary Session of the 61st General Assembly of Arkansas and dismissed the complaint in respect to this statute with prejudice. The said portion of the judgment as to Act 10 from which this appeal is taken reads as follows:

> That to the extent that the plaintiffs seek declaratory and injunctive relief with respect to Act 10 of the Second Extraordinary Session of the 61st General Assembly of the State or Arkansas, the complaint and amended complaint are without merit and are dismissed with prejudice.

This judgment was entered on June 8, 1959.

This appeal is taken pursuant to Title 28, United States [fol. 162] Code, Section 1253.

II.

The Clerk will please prepare a transcript of the entire record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

(a) Complaint; (b) Amended Complaint; (c) Answer of each of the defendants; (d) Motions to Dismiss filed by Bruce Bennett, Attorney General of the State of Arkansas; and Frank Holt, Prosecuting Attorney of Pulaski County, and orders entered thereon; (e) Transcript of Testimony and all exhibits thereto at hearing on the merits; (f) Memorandum Opinion and Judgment of the court entered on June 8, 1959; (g) Stipulations of counsel; (h) Petition for Stay of Judgment and supersedeas pending appeal.

III.

The following questions are presented by this appeal:

(a) Whether Act 10 of the Second Extraordinary Session of 1958 of the Legislature of Arkansas is valid, constitutional and enforceable?

(b) Whether the aforesaid Act 10 by requiring a forced disclosure of membership in organizations regardless of pertinency or relevancy to teacher qualifications or professional fitness is an unconstitutional restraint on freedom of speech and freedom of association guaranteed against state interference by the due process clause of the Fourteenth Amendment to the Constitution of the United States?

(c) Whether the aforesaid Act 10 is in further conflict with the due process clause of the Fourteenth Amendment to the Constitution of the United States in that the restrictions imposed constitute arbitrary and capricious restraints upon the rights of plaintiffs and others similarly situated to pursue their professions and calling in the State of Arkansas?

[fol. 163] (d) Whether the aforesaid Act 10 as a part of an effort by the State of Arkansas to defeat and frustrate school desegregation in the State of Arkansas is in accord with the Fourteenth Amendment's mandate of due process and equal protection of the laws?

J. R. Booker, Century Building, Little Rock, Arkansas; Harold B. Anderson, Thad D. Williams, Christopher C. Mercer, Attorneys for Plaintiffs.

Dated: June 25, 1959

Certificate of Service (omitted in printing).

[fol. 164] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

[Title omitted]

ORDER DENYING STAY—July 7, 1959

On this day it appears to the Court that the application of the plaintiffs for a partial stay of this Court's judgment of June 8, 1959, cannot be granted by the assent of all of the judges, and without convening the Court, and

It further appearing that counsel for the plaintiffs were so advised on June 24, 1959, at which time plaintiffs were also advised of the probable impracticability of convening the Court within the next few days, and

It further appearing thereafter from a letter from J. R. Booker, one of the attorneys for plaintiffs, dated June 26, 1959, that plaintiffs do not desire to urge that this Court convene for the purpose of hearing the application for stay at this time.

It Is by the Court Considered, Ordered and Adjudged that the aforesaid application be, and the same hereby is, denied at this time without prejudice to a renewal thereof.

Dated this 7 day of July, 1959.

Jno. B. Sanborn, United States Circuit Judge; Jno. E. Miller, United States District Judge; J. Smith Henley, United States District Judge.

[fol. 165] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

[Title omitted]

ORDER EXTENDING TIME TO FILE RECORD AND DOCKET CAUSE IN THE SUPREME COURT OF THE UNITED STATES—August 3, 1959

Upon motion of Plaintiffs-Appellants, good cause appearing therefor,

It Is Hereby Ordered, that the time in which to file the record and docket the above entitled cause in the United States Supreme Court be and the same is hereby extended to and including the 22nd day of September, 1959.

Dated this the 3 day of August, 1959.

J. Smith Henley, Judge.

[fol. 166] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 167] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

LITTLE ROCK DIVISION

[Title omitted]

ORDER EXTENDING TIME TO FILE RECORD AND DOCKET CAUSE —September 16, 1959

On this the 16th day of September, 1959, a regular term day of this Court, is presented the application and motion of Plaintiffs (Appellants) for an extension of time from September 22, 1959 to October 22, 1959, in which to lodge and file the record on appeal in the above captioned case, and prepare and file the jurisdictional statements necessary therein in the United States Supreme Court.

Same having been considered, It is Hereby Ordered, that the Petition and Motion be and are hereby approved, and the Plaintiffs (Appellants) are hereby given an additional extension of time from September 22, 1959 to and inclusive of October 22, 1959 in which to file and docket the appeal to the Supreme Court of the United States of the within captioned case.

J. Smith Henley, United States District Judge.

Date Sept. 16, 1959

[fol. 168] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

LITTLE ROCK DIVISION

[Title omitted]

ORDER EXTENDING TIME TO FILE RECORD AND DOCKET CAUSE IN THE UNITED STATES SUPREME COURT —October 16, 1959

On this day, a regular term day of the above captioned Court, is presented the application and petition of the Plain-

tiffs (Appellants), for a further extension of time in which to file and lodge the transcript of the record on appeal of the above captioned cause in the United States Supreme Court.

It being shown that such extension of time is necessary because of the inability of corresponding attorneys to finish and complete the jurisdictional statement, and for other good and cogent reasons;

It Is Therefore Ordered, that the Plaintiffs (Appellants) be and are hereby given an extension of time in which to file and lodge the transcript of record on appeal in the United States Supreme Court from October 22, 1959 to and inclusive of November 22, 1959.

J. Smith Henley, Presiding Judge.

Date October 16, 1959

[fol. 169] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

LITTLE ROCK DIVISION

[Title omitted]

STIPULATIONS AND EXHIBITS TO BE MADE A PART OF RECORD —October 16, 1959

Come B. T. Shelton, one of the Plaintiffs below, and one of the Appellants herein, and the Little Rock Special School District, one of the Defendants and one of the Appellees herein, and agree that the following stipulations and instruments may become a part of the official transcript of record to be considered by the United States Supreme Court upon appeal. Specifically, the stipulations are as follows, to-wit:

I.

That since the trial of this cause there has been a reorganization of the Directors of the Little Rock Special School

District, and the present Directors of the said School District are: Everett Tucker, Jr., Chairman; R. H. Matson, Jr., J. H. Cottrell, Ted Lamb, B. F. Mackey & W. C. McDonald.

II.

That on June 16, 1959, the Directors of the said School District wrote to B. T. Shelton notifying him that he had until June 25, 1959 to comply with the requirements of Act 10 of the Second Extraordinary Session of the 1958 Arkansas Legislature, hereinafter called Act 10. A copy of this letter is attached hereto as Exhibit "A" and made a part of this stipulation.

III.

That B. T. Shelton thereupon filed a petition with the Directors of the Little Rock Special School District requesting an extension of time to comply with the said Act 10. A copy of the petition is attached hereto and made a part of this stipulation as Exhibit "B". That this petition was denied.

IV.

That on June 30, 1959 the Board of Directors wrote B. T. Shelton a letter notifying him that he would not be issued [fol. 170] a contract in that he had not complied with the said Act 10. A copy of said letter is attached hereto as a part of this stipulation as Exhibit "C".

Wherefore, the hereinabove mentioned parties hereby request that the stipulation and instruments set out herein be made a part of the official record to be considered by the United States Supreme Court upon appeal.

Witness our hands and seal on this the 16th day of October, 1959.

J. R. Booker, Christopher C. Mercer, Jr., Harold B. Anderson & Thad D. Williams, Attorneys for B. T. Shelton, By Thad D. Williams.

Mehaffy, Smith & Williams, Attorneys for Little Rock Special School District, By Herschel H. Friday, Jr.

[fol. 171]

EXHIBIT "A" TO STIPULATIONS, ETC.

ADMINISTRATIVE OFFICES
LITTLE ROCK PUBLIC SCHOOLS
8th and Louisiana Phone FRanklin 5-4465
LITTLE ROCK, ARKANSAS

Office of Superintendent

June 16, 1959

Mr. B. T. Shelton
1827 Wolfe Street
Little Rock, Arkansas

Dear Mr. Shelton:

The Little Rock School Board has authorized me to notify you that the Board will not be able to re-employ you unless your affidavit pertaining to Act 10, of the special session of the 1958 Arkansas Legislature, has been properly executed and submitted to this office before the next regular Board meeting, June 25, 1959.

Sincerely,

/s/ TERRELL E. POWELL

Terrell E. Powell
Superintendent of Schools

TEP:st

[fol. 172]

EXHIBIT "B" TO STIPULATIONS, ETC.

TO: THE DIRECTORS OF THE LITTLE ROCK SPECIAL SCHOOL DISTRICT
800 Louisiana Street
Little Rock, Arkansas

PETITION FOR EXTENSION OF TIME TO COMPLY WITH ACT 10

Comes B. T. SHELTON and respectfully requests an extension of time to comply with Act 10, and states:

1. Act 10 of the Second Extraordinary Session of the 1958 General Assembly of the State of Arkansas provides in substance that no person shall be employed as a superintendent, principal or teacher in Arkansas until such person shall have submitted to the appropriate hiring authority an affidavit listing all organizations to which he at the time belongs and to which he has belonged during the past five years, and also a listing of all organizations to which he is paying regular dues or making regular contributions, or to which within the past five years he has paid such dues or made such contributions.

2. That B. T. SHELTON is an employee of the Little Rock Special School District as a teacher, and has heretofore refused to execute the Affidavit required by Act 10 on the grounds that the said Act violates his rights of Speech, Association and Assembly as guaranteed by the Constitution of the United States.

3. That B. T. SHELTON has heretofore filed a Complaint attacking the constitutionality of the said Act 10 in the United States District Court, however, this Complaint was Dismissed on June 8, 1959.

4. That this petitioner is in the process of appealing the decision of June 8, 1959 to the United States Supreme Court, and has made application to the District Court to grant a stay pending the appeal.

5. That petitioner has been informed that this body has set June 25, 1959 as the "deadline" for complying with Act 10; and that the June 25, 1959 "deadline" does not give this petitioner sufficient time to secure a stay on the above mentioned judgment. That petitioner does not desire to lose his employment as a teacher in the Little Rock Special School Distri , and that he has been advised by his attorneys that hi right of appeal may be prejudiced or waived by filing any further instrument pertaining hereto.

[fol. 173] 6. That petitioner feels that Act 10 presents serious Constitutional questions, which are raised in the

appeal, and that an extension of forty-five (45) days will be ample time to process his application for a stay on the hereinabove mentioned judgment.

WHEREFORE, petitioner prays that this body grant him an extension of forty-five (45) days for the reasons as hereinbefore set-out.

/s/ B. T. SHELTON
B. T. SHELTON, Petitioner

J. R. BOOKER
HAROLD B. ANDERSON
CHRISTOPHER C. MERCER, JR.
THAD D. WILLIAMS,

Attorneys for Petitioner

By /s/ J. R BOOKER
J. R. BOOKER

[fol. 174]

EXHIBIT "C" TO STIPULATIONS, ETC.

ADMINISTRATIVE OFFICES
LITTLE ROCK PUBLIC SCHOOLS
8th and Louisiana Phone FRanklin 5-4465
LITTLE ROCK, ARKANSAS

Office of Superintendent

June 30, 1959

Mr. B. T. Shelton
1827 Wolfe Street
Little Rock, Arkansas

Dear Mr. Shelton:

Since the deadline (25 June 1959) has passed as set forth by the Board of Education for compliance with Act 10, of the Special Session, 1958 Arkansas Legislature, and you

have failed to present such an affidavit, we wish to notify you that no contract will be offered for the ensuing year.

Sincerely yours,

LITTLE ROCK BOARD OF EDUCATION

/s/ EVERETT TUCKER, JR.

Everett Tucker, Jr., President

ET:ra

[fol. 175] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

LITTLE ROCK DIVISION

[Title omitted]

ORDER ON STIPULATION—October 16, 1959

On this 16 day of October, 1959, is presented a Petition asking that certain stipulations and instruments be made a part of the official transcript to be considered by the United States Supreme Court upon appeal.

It Is Therefore by the Court Considered and Ordered, that the stipulations and instruments attached thereto be and are hereby made a part of the official transcript of this case to be considered by the United States Supreme Court upon appeal.

J. Smith Henley, Judge.

[fol. 175a] Clerk's Certificate (omitted in printing).

[fol. 176]

SUPREME COURT OF THE UNITED STATES

No. 541, October Term, 1959

B. T. SHELTON, et al., Appellants,

v.

ED I. MCKINLEY, JR., et al.

ORDER NOTING PROBABLE JURISDICTION—January 25, 1960

Appeal from the United States District Court for the Eastern District of Arkansas.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[fol. 177]

SUPREME COURT OF THE UNITED STATES

No. 541, October Term, 1959

B. T. SHELTON, et al., Appellants,

v.

ED I. MCKINLEY, JR., et al.

ORDER OF SUBSTITUTION—April 25, 1960

On Consideration of the motion to substitute Everett Tucker, Jr., as President of the Board of Directors of the Little Rock Special School District, J. H. Cottrell, B. F. Mackey and W. C. McDonald as parties appellee in the place of Ed I. McKinley, Jr., Ben D. Rowland and Robert W. Laster in this case.

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

[fol. 178]

SUPREME COURT OF THE UNITED STATES

No. 541, October Term, 1959

B. T. SHELTON, et al., Appellants,

v.

ED I. MCKINLEY, JR., et al.

ORDER OF SUBSTITUTION—April 25, 1960

On Consideration of the joint motion to substitute John E. Fox as a party appellee in the place of Ralph Mitchell, Jr. and to name Charles V. Kalkbrenner as a party appellee instead of J. C. Langley in this case,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

FILE COPY

Office Supreme Court, U.S.
FILED
NOV 23 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 541 14

B. T. SHELTON, for himself and others similarly situated; ARKANSAS TEACHERS ASSOCIATION, on its own behalf, and on behalf of its members; T. W. COGGS, as Executive Secretary of the Arkansas Teachers Association,

Appellants,

v.

ED. I. McKINLEY, JR., Chairman, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

STATEMENT AS TO JURISDICTION

J. R. BOOKER,
Century Building,
Little Rock, Arkansas.

THAD D. WILLIAMS,
800½ West 9th Street,
Little Rock, Arkansas.

ROBERT L. CARTER,
20 West 40th Street,
New York, New York,
Attorneys for Appellants.

HAROLD B. ANDERSON,
CHRISTOPHER C. MERCER,
GEORGE HOWARD, JR.,
of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

B. T. SHELTON, for himself and others similarly situated; ARKANSAS TEACHERS ASSOCIATION, on its own behalf, and on behalf of its members; T. W. COGGS, as Executive Secretary of the Arkansas Teachers Association,

Appellants,

v.

ED. I. MCKINLEY, JR., Chairman, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

STATEMENT AS TO JURISDICTION

Appellants appeal from the judgment of the United States District Court for the Eastern District of Arkansas entered on June 8, 1959, holding that Act 10 of the Second Extraordinary Session, 1958, of the General Assembly of the State of Arkansas conforms to the requirements of the Fourteenth Amendment to the Constitution of the United States and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The opinion of the United States District Court for the Eastern District of Arkansas is not yet reported and is set out in the appendix hereto *infra*, at page 23.

Jurisdiction

This action was instituted to enjoin and to restrain appellees from enforcing Act 10 of the Second Extraordinary Session, 1958, and Act 115 of the Regular Session, 1959, of the General Assembly of the State of Arkansas on the ground that these statutes contravened the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

The judgment of the District Court was entered on June 8, 1959 (R. 159), and notice of appeal was filed in that court on June 25, 1959 (R. 161). Jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1253.

By orders entered on August 3, 1959, September 16, 1959, and October 16, 1959, by Judge J. Smith Henley, one of the judges who heard this cause in the court below, the time in which to docket the appeal in this Court was extended to and including November 22, 1959.

The following decisions sustain the jurisdiction of this Court to review the judgment on direct appeal in this case: *Brown* v. *Board of Education*, 347 U. S. 483; *Bryan* v. *Austin*, 354 U. S. 933, vacated as moot; *Evers* v. *Dwyer*, 358 U. S. 202.

Question Presented

Whether a state may require as a condition of employment of superintendents, principals, teachers, professors and instructors in the public schools and in public institutions of higher learning that such superintendents, principals, professors, teachers and instructors file an affidavit with appropriate school authorities listing the names of all organizations to which they belong and have belonged, or to which they have paid regular dues or made regular contributions for the past five years preceding, and not

limit such inquiry into organizational activities and associations which are concretely related to teacher fitness, competence or suitability for employment, without contravening those safeguards to academic freedom and freedom of association, protected against state interference by the Fourteenth Amendment to the Constitution of the United States.

Statute Involved

Act 10 of 1958

An Act to Provide Assistance in the Administration and Financing of Public Schools, and to Require Affidavits from Administrative and Professional Employees, Including Superintendents, Principals and Instructors of the Elementary and Secondary Schools, and Colleges and Universities of the State of Arkansas Relative to All Incorporated and/or Unincorporated Associations and Organizations to Which They Have Belonged or Have Been Affiliated With for the Past Five Years; to Provide Penalties for Failure to Comply, and for Other Purposes.

Be it Enacted by the General Assembly of the State of Arkansas:

Section 1. It is hereby declared that the purpose of this act is to provide assistance in the administration and financing of the public schools of Arkansas, and institutions of higher learning supported wholly or in part by public funds, and it is hereby determined that it will be beneficial to the public schools and institutions of higher learning and the State of Arkansas, if certain affidavits of membership are required as hereinafter provided.

Section 2. No superintendent, principal, or teacher shall be employed or elected in any elementary or secondary school by the district operating such school, and no instructor, professor, or other teacher shall be employed or elected in any institution of higher learning, or other edu-

cational institution supported wholly or in part by public funds, by the trustees or governing authority thereof, until, as a condition precedent to such employment, such superintendent, principal, teacher, instructor or professor shall have filed with such board of trustees or governing authority an affidavit as to the names and addresses of all incorporated and/or unincorporated associations and organizations that such superintendent, principal, teacher, instructor or professor is or within the past five years has been a member of, or to which organization or association such superintendent, principal, teacher, instructor, professor, or other teacher is presently paying, or within the past five years has paid regular dues, or to which the same is making or within the past five years has made regular contributions.

SECTION 3. Such affidavit may be in substantially the following form:

STATE OF ARKANSAS }
COUNTY OF ..... }

I, (name of affiant), being an applicant for the position of ..... at (name of school or institution), being first duly sworn, do hereby depose and say that I am now or have been within the past five years a member of the following organizations and no others:

(names and addresses of organizations)

and further, that I am now paying, or within the past five years have paid, regular dues or made regular contributions to the following organizations and no others:

(names and addresses of organizations)

.....
Signature of Affiant

Subscribed and sworn to before me this..... day of ....., 19 .....

.....
Signature and Title of Official

SECTION 4. Any contract entered into by any board of any school district, board of trustees of any institution or higher learning, or other educational institution supported wholly or in part by public funds, or by any governing authority thereof, with any superintendent, principal, teacher, instructor, professor, or other instructional personnel, who shall not have filed the affidavit required in Section 2 hereof prior to the employment or election of such person and prior to the making of such contracts, shall be null and void and no funds shall be paid under said contract to such superintendent, principal, teacher, instructor, professor, or other instructional personnel; any funds so paid under said contract to such superintendent, principal, teacher, instructor, professor, or other instructional personnel, may be recovered from the person receiving the same and/or from the board of trustees or other governing authority by suit filed in the circuit court of the county in which such contract was made, and any judgment entered by such court in such cause of action shall be a personal judgment against the defendant therein and upon the official bonds made by such defendants, if any such bonds be in existence.

SECTION 5. Every person who shall wilfully file a false affidavit under the provisions of this act shall be guilty of perjury, shall be punished by a fine of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00), and in addition shall forfeit his license to teach in any of the schools, institutions of higher learning, or other educational institutions supported wholly or in part by public funds in this State. All penalties collected under the terms of this act shall be forwarded to the State Treasurer to be placed by him in the common public school fund.

SECTION 6. If any paragraph, sentence, clause, phrase, or word of this act shall be held to be unconstitutional for any reason, such holding of unconstitutionality shall

not affect any other portion of this act; nothing contained herein, however, shall be construed so as to affect the validity of any contract entered into prior to the effective date of this act.

SECTION 7. It is hereby determined that the decisions of the United States Supreme Court in the school segregation cases require solution of a great variety of local public school problems of considerable complexity immediately and which involve the health, safety and general welfare of the people of the State of Arkansas, and that the purpose of this act is to assist in the solution of these problems and to provide for the more efficient administration of public education. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.

Statement

In August, 1958, the Governor of the State of Arkansas called a Second Extraordinary Session of the General Assembly to deal with the decision of the United States Court of Appeals for the Eighth Circuit in *Cooper* v. *Aaron*, 257 F. 2d 33, concerning desegregation of public high schools in Little Rock, Arkansas.

One of the measures enacted at this extraordinary session was Act 10 here at issue. This statute provides that no person shall be employed in a teaching capacity in any public school or public institution of higher learning in the State of Arkansas until he shall have submitted in affidavit form to appropriate school officials a list of organizational associations and relationships for the preceding five years. Any contract entered into without the prescribed affidavit being executed was rendered void; no public monies could be paid to any person not executing the affidavit as compensation for services; and a false affi-

davit was declared to be perjury, subjecting the offender to loss of license and a fine of from $500 to $1000.[1]

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[1] Act No. 115, not at issue here, was passed at the Regular 1959 Session of the General Assembly and made persons who belonged to the National Association for the Advancement of Colored People ineligible for public employment. The instant proceedings sought to enjoin enforcement of both Act 10 and Act 115. The court struck down Act 115, but upheld the constitutionality of Act 10. The provisions of Act 115 follow:

ACT 115 OF 1959

AN ACT TO MAKE UNLAWFUL THE EMPLOYMENT BY THE STATE, SCHOOL DISTRICT OR ANY COUNTY OR MUNICIPALITY THEREOF OF ANY MEMBER OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, AND TO PROVIDE PENALTIES FOR VIOLATIONS.

WHEREAS, the National Association for the Advancement of Colored People has, through its program and leaders in the State of Arkansas, disturbed the peace and tranquility which has long existed between the White and Negro races, and has threatened the progress and increased understanding between Negroes and Whites; and

WHEREAS, the National Association for the Advancement of Colored People has encouraged and agitated the members of the Negro race in the belief that their children were not receiving educational opportunities equal to those accorded white children, and has urged the members of the Negro race to exert every effort to break down all racial barriers existing between the two races in schools, public transportation facilities and society in general; and

WHEREAS, the National Association for the Advancement of Colored People has made a strenuous effort to imbue the members of the Negro race with the belief that they are the subject of economic and social strangulation which will forever bar Negroes from improving their standard in life and raising their standard of living to that enjoyed by the White race; and

WHEREAS, the General Assembly believes that in view of the known teachings of the National Association for the Advancement of Colored People and the constant pressure exerted on its members of our States rests, and that the National Association for the advancement of Colored People is so insidious in its propaganda and the fostering of those ideas designed to produce a constant state of turmoil between the races, that membership in such an organization

[Continued on page 8]

All the evidentiary facts of significance in this appeal are undisputed. Appellant B. T. Shelton had taught in

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[Continued from page 7]

is wholly incompatible with the peace, tranquality and progress that all citizens have a right to enjoy; and

WHEREAS, the Special Education Committee of the Arkansas Legislative Council has found that the National Association for the Advancement of Colored People is a captive of the international communist conspiracy;

NOW THEREFORE,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. It shall be unlawful for any member of the National Association for the Advancement of Colored People to be employed by the State, school district, county or any municipality thereof, and such prohibition against employment by the State, school district, county or any municipality thereof shall continue so long as membership in the National Association for the Advancement of Colored People is maintained.

SECTION 2. The board of trustees of any public school or State supported college shall be authorized to demand of any teacher or other employee of the school, who is suspected of being a member of the National Association for the Advancement of Colored People, that he submit to the board a written statement under oath setting forth whether or not he is a member of the National Association for the Advancement of Colored People, and the immediate employer of any employee of the State or of any county or municipality thereof is similarly authorized in the case any employee is suspected of being a member of the National Association for the Advancement of Colored People. Any person refusing to submit a statement as provided herein, shall be summarily dismissed.

SECTION 3. A person dismissed from, or declared ineligible for, employment under the provisions of this act, may within four months of such dismissal or declaration of ineligibility be entitled to petition for an order to show cause before any circuit court of the State why a hearing on such charges should not be had. Until the final judgment on said hearing is entered, the order to show cause shall stay the effect of dismissal or ineligibility based on the provisions of this act. The hearing shall consist of the taking of testi-

[Continued on page 9]

the Little Rock Special School District for over 25 years prior to his discharge for refusing to execute the affidavit required by Act 10 (R. 83). There had been no complaint about his work heretofore, and prior to the enactment of Act 10 his teaching contract had been renewed in the latter part of each May, as was the custom, for the next ensuing school year (R. 88).

Appellant, the Arkansas Teachers Association, is an incorporated organization of Negro teachers of the State of Arkansas which seeks to aid in the educational advancement and professional growth of its members and protect their welfare (R. 64). At the time of the hearing below, the testimony reveals that 2,900 out of a potential of 3,200 Negro teachers in Arkansas were paid up members of this Association (R. 116). Appellant T. W. Coggs is the Executive Secretary of the organization and its chief executive officer.

[Continued from page 8]

mony in open court with opportunity for cross-examination. The burden of sustaining the validity of an order of dismissal or declaration of ineligibility by a fair preponderance of the credible evidence shall be upon the person making such dismissal or declaration of ineligibility.

SECTION 4. Any person employing any individual contrary to the provisions of this act shall be subject to a fine of not exceeding one hundred dollars ($100.00) for each separate offense.

SECTION 5. All laws or parts of laws inconsistent herewith are hereby repealed.

SECTION 6. It has been found and is declared by the General Assembly of Arkansas that the National Association for the Advancement of Colored People has operated in the State of Arkansas in such a manner as to create a state of turmoil between the races, which is incompatible with the public welfare, and that enactment of this bill will tend to alleviate some of the adverse activities of such organization. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.

APPROVED: February 24, 1959.

Each of the appellees is charged with the responsibility of employing public school teachers, supervisors, principals, instructors or professors in a public school or in a public institution of higher learning. Each is charged with responsibility for the enforcement of Act 10, and each has required all teaching personnel under its supervision and authority to file the affidavit called for by Act 10 as a prerequisite for employment.

On April 3, 1959, appellant Shelton, along with all other teachers and principals, received a memorandum from the superintendent of the Little Rock Special School District requesting him to comply with Act 10 and fill out an affidavit listing all the organizations to which he belonged and to which he had belonged during the past five years. Appellant was ordered to return the completed affidavit to his principal not later than April 13, 1959, and his principal was to alphabetize and file all the completed affidavits in the superintendent's office not later than April 14, 1959 (R. 85, 86). Appellant, who was admittedly a member of the National Association for the Advancement of Colored People (hereinafter referred to as the N.A.A.C.P.), refused to fill out the necessary affidavit, but filed a statement questioning the constitutional validity of the requirement that his associational relationships be revealed as a condition of his employment. On May 5, 1959, he was notified that his contract would not be renewed.

The instant proceedings were instituted on April 21, 1959, against the Little Rock Special School District, the Attorney General and the Prosecuting Attorney of Pulaski County (R. 4). At the hearing appellants consented to dismissal of the complaint as to the Attorney General and Prosecuting Attorney of Pulaski County. On May 2, 1959, an amended complaint was filed adding the Arkansas Teachers Association and T. W. Coggs, its Executive Secretary, as parties-plaintiff and the Pine Bluff Special School District, the President and the Board of Trustees of the Arkansas A. & M. College for Negroes as parties-defendant.

The suit was instituted as a class action under Rule 23(a) of the Federal Rules of Civil Procedure, and the constitutionality of both Act 10, involved in this appeal, and Act 115, passed at the Regular 1959 Session of the General Assembly, pursuant to which members of the N.A.A.C.P. were declared ineligible for public office, was before the court.

A hearing on the cause was held on May 25, and on June 8, 1959, the court below held that Act 115 was at war with the requirements of the Fourteenth Amendment and that membership in the N.A.A.C.P. could not be a valid basis for denying public employment. Act 10, on the other hand, was upheld and as to it, the complaint was dismissed with prejudice.

Subsequent to this decision, appellant Shelton was notified on June 16 by the Directors of the Little Rock Special School District that he had until June 25 to comply with the requirements of Act 10. Thereupon, appellant petitioned the Directors for an extension of time, which was denied, and on June 30, 1959, he was notified that he would not be issued a contract for the 1959-60 school term because of failure to file the affidavit required by Act 10. A stipulation to this effect was entered into by counsel for appellants and appellee, the Little Rock Special School District, and made a part of the record in this case.

The Question Presented Is Substantial

1. Act 10, the constitutional validity of which is in question here, requires as a condition of employment that a teacher in a public school or public institution of higher learning in Arkansas file an affidavit listing all organizational connections in respect to membership and contributions for a period embracing the preceding five years. This statute was a product of the Second Extraordinary Session of the General Assembly of the State of Arkansas which met on August 23, 1958, pursuant to a call from the

Governor, to enact legislation designed to deal with the problem of school desegregation posed by the decision of the United States Court of Appeals in *Cooper* v. *Aaron*, 257 F2d 33 (8th Cir. 1958).

At this session, in addition to Act 10, Acts 4, 5, 6 and 7 were also enacted. These statutes provide for the closing of schools in the event of their being under court order to desegregate; empower school officials to withhold funds from desegregated schools; provide public funds for private schools; permit the transfer of students from integrated to segregated schools; and provided for separate classes for Negro and white schools within a desegregated school. Of these, Acts 4 and 5 have been struck down as in conflict with the due process and equal protection clauses of the Fourteenth Amendment. *Aaron* v. *McKinley*, 173 F. Supp. 944 (E. D. Ark. 1959).

In addition to this legislation, Acts 12, 13, 14 and 16, designed to curb and restrict the activities of organizations which advocate desegregation, were enacted into law. These statutes require the disclosure of the names of the members of organizations; empower the Attorney General to seize organizational records and amend the barratry and champetry law so that it is now a criminal offense for organizations in Arkansas to sponsor litigation designed to bring an end to state imposed restrictions based upon race.

It seems clear, therefore, that Act 10 is a part of a legislative plan and design to maintain racial segregation in public institutions in the State despite the Fourteenth Amendment mandate to the contrary. The disclosure provision in Act 10 is an important element in this legislative plan and design in that this requirement will act as an effective deterrent to teachers in public institutions from maintaining links with or giving support to any organization advocating desegregation.

In order to make doubly certain that Act 10 would achieve this objective, at the subsequent 1959 Regular Session of the General Assembly, Act 115 was enacted making membership in the NAACP a disqualification for public employment. While this legislation was struck down by the court below, and appellees were enjoined from discharging appellant because of N.A.A.C.P. membership, the pernicious effect of Act No. 10 is not thereby removed. Merely because membership in a particular organization is not specifically made a barrier to employment does not save this law—its effect is as devastating as if Act 115 were still in effect.

It is obvious, appellants submit, that Act 10 will curb teachers in the exercise of rights of freedom of association. It will necessarily discourage their participation in or their giving support to any organization, however innocent, which is or is thought to be unpopular with their superiors. In view of the legislative history of Act 10, its clear intendment is to discourage teachers from joining or giving support to organizations, such as the N.A.A.C.P., which advocate desegregation and engage in activity aimed at accomplishing that objective, and from the teachers themselves voicing such ideas in the classrooms. Indeed, advocacy by the teacher of compliance with the law of the land as interpreted by this Court in *Brown* v. *Board of Education, supra,* is proscribed.

These reasons alone, appellants submit, are sufficient to render the constitutionality of Act 10 suspect and warrant review of the judgment of the lower court.

2. Act 10 is a sweeping interference with the exercise of the right of freedom of association and privacy in such association of teachers in public institutions in Arkansas. While exercise of this right in general is protected against state encroachment under the 14th Amendment, here not only is its general exercise at stake, but academic freedom as well. In *Sweezy* v. *New Hampshire,* 354 U. S. 234, 251,

Mr. Chief Justice Warren, speaking for four of the Justices of this Court, said he could conceive of no circumstances "wherein a state interest would justify infringement of rights" of the individual to academic and political freedom. Nothing in *Uphaus* v. *Wyman*, 360 U. S. 72, has modified the import of that statement.

Of course, the state is not powerless to make inquiries concerning the character, fitness, trustworthiness and suitability of public employees, including teachers. See *Adler* v. *Board of Education*, 342 U. S. 485; *Garner* v. *Los Angeles Board of Public Works*, 341 U. S. 716; *Beilan* v. *Board of Education of Philadelphia*, 357 U. S. 399; *Lerner* v. *Casey*, 357 U. S. 486; *Slochower* v. *Board of Education*, 350 U. S. 551. The mere fact that one is a public employee, however, does not afford the state the power to interfere with those constitutionally secured freedoms which the public servant would otherwise possess as a private citizen. See *Wieman* v. *Updegraff*, 344 U. S. 183; *Sweezy* v. *New Hampshire*, *supra*; Mr. Justice Frankfurter, concurring in *Garner* v. *Board of Public Works*, *supra*, at 724.

No issue in respect to subversion, loyalty or the power of the government to protect itself against overthrow by violence is involved here. While decisions of this Court might support an inquiry into past and present membership in the Communist Party as a relevant factor bearing upon the character, fitness, trustworthiness and suitability of a public employee, see *Garner* v. *Los Angeles Board of Public Works*, *supra*, those cases fall into a special category not relevant to decision where that issue is not present, as is the situation in this case. See *Barenblatt* v. *United States*, 360 U. S. 109.

The court below, appellants respectfully submit, fell into fatal error in reasoning that because association in subversive organizations has been held relevant to a determination of fitness for public employment, the sweeping

inquiry into associational relationships which Act 10 provides was permissible in determining teacher fitness. It said:

> While membership in a subversive organization, such as the Communist Party, is, of course, a relevant factor bearing upon a person's fitness for employment as a school teacher or college instructor, other factors are relevant as well. A school board in undertaking to select teachers is entitled to take into consideration not only an applicant's competency and loyalty, but also his or her personality, habits and manner of living and social, professional and political background and affiliations, to the end that it may select not only competent teachers, but those whose employment or retention in employment is to the best interest of all concerned.
>
> This does not mean, of course, that the Legislature can require a local school district or institution of higher learning to make inquiries of its employees or applicants for employment than are wholly irrelevant to their suitability for employment. (See Appendix, page 9)

Appellants respectfully submit that this reasoning misses the narrow basis upon which this Court has sustained interference with freedom of speech and of association where the question involves subversion and the right of the government to protect itself against overthrow by violence. In this area, because of the belief by the Court that subversion poses a grave danger to the existence of our society, or that the legislative judgment that such a danger is present cannot be disregarded, this Court has afforded government considerably greater leeway in taking steps to meet the danger there presented and has countenanced interference with freedom of speech and of association, which would not be permissible under other circumstances. See *Barenblatt* v. *United States, supra; Uphaus* v. *Wyman, supra; American Communications Association* v. *Douds*, 339 U. S. 382. It seems clear then that the rationale which

supports interference with speech, when the justification therefor is protection against subversion, will not sustain similar restrictions where no problem of subversion is present. Compare *Sweezy* v. *New Hampshire, supra*, with *Uphaus* v. *Wyman, supra*; and *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449, with *Bryant* v. *Zimmerman*, 278 U. S. 63.

That the disclosure of associational relationships in the affidavit, which Act 10 requires teachers to fill out, constitutes an abridgement of freedom of speech and of association protected against state encroachment by the Fourteenth Amendment, absent a state interest compelling in nature to justify the intrusion, is no longer open to question. In *N.A.A.C.P.* v. *Alabama, supra*, this Court recognized inviolability of privacy in group associations as being indispensable to the preservation of freedom of association, protected against state interference by the Fourteenth Amendment to the Constitution of the United States. In *Sweezy* v. *New Hampshire, supra*, Mr. Chief Justice Warren said at page 250:

> Merely to summon a witness and compel him, against his will, to disclose the nature of his past expressions and associations is a measure of governmental interference in these matters. These are rights which are safeguarded by the Bill of Rights and the Fourteenth Amendment.

See also *American Communications Association* v. *Douds, supra*; *United States* v. *Rumely*, 345 U. S. 41; *Sweezy* v. *New Hampshire, supra*; *N.A.A.C.P.* v. *Alabama, supra*.

The substantiality of the state interest, as found by the court below, is its conceded right to determine character, fitness, trustworthiness and suitability of the public school teacher. But where that interest tends to collide with freedom of speech and of association, it can only be preserved in a narrowly drawn statute designed specifically to determine employee character, fitness, trustworthiness and suitability.

See *Cantwell* v. *Connecticut*, 310 U. S. 296. But Act 10, on the contrary, is not a narrowly drawn statute specifically designed to protect the integrity of the public teaching profession. It is a blanket invasion on the privacy of past and present associations of public school teachers as a class. As such, appellants submit, it cannot be sustained.

It can be argued that the listing here required is not punitive, and that the revelations which Act 10 makes necessary are not frought with adverse consequences, since Act 115 is not enforceable. It could be argued that the required disclosures amount merely to giving state officials information in respect to the teacher's private life. This does not meet the problem, however. There is no teacher tenure in Arkansas; teachers must merely be notified by a particular date each year that their contracts will not be renewed. Unless this is done, they are automatically entitled to a renewal of their contracts for the following year. Arkansas Statutes, 1947, Section 80-1304(b). Even with tenure, appellants submit, these disclosures could not be sanctioned, but their effect is necessarily far greater than would be the case if tenure were assured. Teachers in Arkansas must know that certain organizations are not favored, and that membership therein will be frowned upon by their superiors. They will not fail to understand that membership in a dissident organization could be the cause, albeit *sub silento*, of loss of job. They know that membership in or a contribution to an organization unpopular with their superiors is not wise. As a direct consequence, the natural tendency of the teacher will be to forego all organizational relationships except those which are certain to meet with approval. Moreover, the mere fact that employment can be discontinued at the close of the contract year without cause does not render discontinuation for a cause forbidden by the Constitution allowable, see *Schware* v. *Board of Bar Examiners*, 353 U. S. 232; *Konigsberg* v. *State Bar*, 353 U. S. 252; or that other inroads on the constitutional rights of an employee are permissible. See *Weiman*

v. *Updegraff, supra; Sweezy* v. *New Hampshire, supra.* ***supra.***

Mr. Justice Frankfurter, concurring in *Weiman* v. *Updegraff, supra,* pp. 195-197, has aptly described the role of the teacher and his relationship to the maintenance of freedom of thought and speech in our society. There he said:

> By limiting the power of the States to interfere with freedom of speech and freedom of inquiry and freedom of association, the Fourteenth Amendment protects all persons, no matter what their calling. But, in view of the nature of the teacher's relation to the effective exercise of the rights which are safeguarded by the Bill of Rights and by the Fourteenth Amendment, inhibition of freedom of thought, and of action upon thought, in the case of teachers brings the safeguards of those amendments vividly into operation. Such unwarranted inhibition upon the free spirit of teachers affects not only those, who like the appellants, are immediately before the Court. It has an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice; it makes for caution and timidity in their associations by potential teachers. . . . That our democracy ultimately rests on public opinion is a platitude of speech but not a commonplace in action. Public opinion is the ultimate reliance of our society only if it be disciplined and responsible. It can be disciplined and responsible only if habits of open-mindedness and of critical inquiry are acquired in the formative years of our citizens. The process of education has naturally enough been the basis of hope for the perdurance of our democracy on the part of all our great leaders, from Thomas Jefferson onwards.
>
> To regard teachers—in our entire educational system, from the primary grades to the university—as the priests of our democracy is therefore not to indulge in hyperbole. It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible

> citizens, who, in turn, make possible an enlightened and effective public opinion. Teachers must fulfill their functions by precept and practice, by the very atmosphere which they generate; they must be exemplars of open-mindedness and free inquiry. They cannot carry out their noble task if the conditions for the practice of a responsible and critical mind are denied to them. They must have the freedom of responsible inquiry, by thought and action, into the meaning of social and economic ideas, into the checkered history of social and economic dogma. They must be free to sift evanescent doctrine, qualified by time and circumstances, from that restless, enduring process of extending the bounds of understanding and wisdom, to assure which the freedoms of thought, of speech, of inquiry, of worship are guaranteed by the Constitution of the United States against infraction by national or State government.

Mr. Chief Justice Warren, in *Sweezy* v. *New Hampshire, supra* at page 250, stressed the vital need for maintenance of academic freedom in a democratic society. While there the emphasis was upon freedom at the university level, it is even more apposite here where a state's entire public educational system is involved.

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any straitjacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise, our civilization will stagnate and die.

In the academic field a sense of freedom is mandatory if the frontiers of knowledge are to broaden. A teacher, as the excerpts from the opinions of Mr. Chief Justice Warren and Mr. Justice Frankfurter demonstrate, operates in an area in which concepts and standards fundamental to a free society must be nurtured and fostered, if individual freedom is to be preserved. If teachers are fearful, afraid to be critical or inquisitive, and afraid to dissent, they cannot successfully impart to youth that thirst for knowledge or that freedom of spirit to question—a process of the mind and spirit essential to progress and growth in any society.

In short, the public interest in the inviolability of the privacy of teacher associations is certainly no less than that in respect to the private citizen. It is essential that a teacher be free to join and to participate in organizational activities of all kinds without regard to its popularity or general acceptance. Only where that organizational activity involves subversion as it relates to character, fitness, trustworthiness and suitability for employment has state interference therewith been deemed warranted. See *Beilan* v. *Board of Education, of Philadelphia, supra; Lerner* v. *Casey, supra.* Cf. *Wieman* v. *Updegraff, supra.*

The fact that Act 10 does not relate directly to the content of what is being taught in the classroom does not render the interference less pernicious, nor the invasion on academic freedom less serious. Act 10 subjects teachers to fear of the controversial and this deadening of spirit will necessarily affect the classroom performance. A pall is cast on the intellectual atmosphere of public institutions of Arkansas by this statute which tends to undermine intellectual curiosity and make a virtue of conformity.

Moreover, the stated objective of Act No. 10 as set out in Section 1 thereof is "to provide assistance in the administration and financing of the public schools of Arkansas, and institutions of higher learning supported wholly or in part by public funds . . . ." Not only does this objective fail

to afford that compelling justification which must be demonstrated if this statute is to be sustained, but there is no reasonable relationship between that legislative objective and the requirement that associational relationships be disclosed.

3. The vital importance of the issue here posed is clearly manifest. What the State of Arkansas seeks to do by the enactment of Act 10 is to impose directly upon its citizenry a requirement of conformity. This the state is powerless to do under the federal Constitution. Ours is a free society—a society in which the freedom to disseminate ideas, freedom to think and freedom to dissent must be maintained if we are to preserve any esential difference between our democratic society and the totalitarian state. To allow state interference with the exercise of freedom of association and privacy therein by the public school teacher, without being related to character, fitness, trustworthiness and suitability, is to permit a deep inroad into freedom not permitted thus far under any decision of this Court.

This case is more far-reaching than *Weiman* v. *Updegraff*, *supra*. There the basis for the attempted intrusion, which this Court struck down, was membership in subversive organizations. Here even that limitation is absent, and disclosure is required of all organizational associations without regard to their character or purpose or their relation to teacher fitness. The power of the state to make such a sweeping restriction upon First Amendment rights poses an issue of great public importance which should be finally determined by this Court.

Wherefore, for the reasons hereinabove stated, this appeal should be granted and this Court should review the judgment of the court below.

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Certificate of Service

I hereby certify that copies of this Statement was this day served by depositing same in a United States mail box, with first-class postage prepaid, to the following counsel of record:

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Dated: November 20, 1959.

Robert L. Carter.

APPENDIX

Memorandum Opinion and Judgment of United States District Court for Eastern District of Arkansas

(Filed on June 8, 1959)

PER CURIAM.

This is a class action in which the plaintiffs[1] seek declaratory and injunctive relief against the endorsement of Act 10 of the Second Extraordinary Session of the Arkansas Legislature, held in August, 1958, and of Act 115 of the regular 1959 session of that body. It is claimed that those statutes are violative of the First and Fourteenth Amendments to the Constitution of the United States. Upon the filing of the complaint, a statutory court of three judges was convened, and the case has been tried to that court.

Act 10 provides in substance that no person shall be employed or elected to employment as a superintendent, principal or teacher in any public school in Arkansas, or as an instructor, professor or teacher in any public institution of higher learning in that State until such person shall have submitted to the appropriate hiring authority an affidavit listing all organizations to which he at the time belongs and to which he has belonged during the past five years, and also listing all organizations to which he at the time is paying regular dues or is making regular contributions, or to which within the past five years he has paid such dues or made such contributions. The Act fur-

[1] The plaintiffs are: B. T. Shelton, a Negro school teacher employed in the Little Rock public school system; the Arkansas Teachers Association (ATA), a professional organization, the membership of which consists of Negro school teachers and college professors in the State of Arkansas; and T. W. Coggs, the Executive Secretary of ATA. The plaintiff, Shelton, sues for himself and others similarly situated; and the ATA and Coggs are suing for the benefit of members of the Association.

ther provides, among other things, that any contract entered into with any person who has not filed the prescribed affidavit shall be void; that no public moneys shall be paid to such person as compensation for his services; and that any such funds so paid may be reversed back either from the person receiving such funds or from the board of trustees or other governing body making the payment. The filing of a false affidavit is denounced as perjury, punishable by a fine of not less than five hundred nor more than one thousand dollars, and, in addition, the person filing the false affidavit is to lose his teaching license.

Section 1 of Act 115 makes it unlawful for any member of the National Association for the Advancement of Colored People (hereinafter called NAACP) to be employed by the State of Arkansas or any of its subdivisions, or by any school district, and declares that the prohibition of such employment shall continue so long as membership in the NAACP exists. Section 2 authorizes employing agencies to require from any employee an affidavit as to whether he is a member of the NAACP and a refusal to furnish the affidavit is made a ground for dismissal from employment.

Section 3 of the Act provides in substance that any person discharged from or declared ineligible for public employment on account of NAACP membership may, within four months of such dismissal or declaration, petition the circuit court for an order to show cause why a hearing on the charges against him should not be had; that until the final judgment on such hearing the dismissal or declaration of ineligibility shall be stayed; that the hearing shall consist of the taking of evidence with the right of cross-examination, and that the burden of sustaining the validity of an order of dismissal or declaration of ineligibility by a fair preponderance of the credible evidence shall be upon the person making such dismissal or declaration of ineligibility.

The operative sections of this statute are preceded by a preamble, the gist of which is that the NAACP has been guilty of creating racial strife and turmoil in the State of Arkansas; that it has threatened progress in race relations in the State; that it has striven to stir up dissatisfaction and unrest among Negroes and that because of its purposes and activities membership therein is incompatible with the "peace, tranquillity and progress that all citizens have a right to enjoy." The preamble also contains a recitation that the Special Education Committee of the Arkansas Legislative Council[2] has found that the NAACP "is a captive of the international communist conspiracy".

When the suit was originally filed, B. T. Shelton was the only named plaintiff, and the original defendants were the Little Rock, Arkansas Special School District, the members of the Board of Directors of that District, and the Superintendent of Schools. Subsequently, an amended complaint was filed adding ATA and its executive secretary as plaintiffs, and adding as defendants the Pine Bluff, Arkansas, Special School District, the members of the School Board of that District and the Superintendent of Schools, and the Board of Trustees and President of the Arkansas A. M. & N. College for Negroes.

Also named as defendants were Bruce Bennett, Attorney General of the State of Arkansas, and Frank Holt, Prosecuting attorney of the Sixth Judicial Circuit of Arkansas, which includes Little Rock. Both the attorney general and the prosecuting attorney filed motions to dismiss, and at the commencement of the trial it was agreed that the complaint might be dismissed as to them without prejudice. Also named as members of the Pine Bluff School Board were Ralph Mitchell, Jr., and J. C. Langley. It developed

[2] The Arkansas Legislative Council is an agency of the Arkansas Legislature which functions during interims between sessions, makes studies of legislative problems, and reports thereon; to the Legislature.

that one of these gentlemen had never been a member of the Board, and that the other had resigned prior to the filing of the suit, and it was agreed that the case might be dismissed as to them.

Reduced to essentials, the claim of the plaintiffs is that the two statutes in question deprive the plaintiff Shelton and others similarly directed, and the members of ATA of liberty and property without due process of law, that they deny them the equal protection of the law; that they infringe upon their rights of freedom of speech, freedom of the press, freedom of assembly and association and to petition for redress of grievances, and deny them privileges and immunities of citizens of the United States. It is further claimed that Shelton and the plaintiff class are threatened with irreparable injury and have no adequate remedy at law.

In their answers the defendants deny the claim of the plaintiffs that the statutes are unconstitutional; they further contend that this court is without jurisdiction, and that this is not a proper class action. In the alternative, they ask that proceedings herein be stayed until the two statutes can be construed by the Arkansas state courts.

It appears that plaintiff Shelton has been employed as a teacher in the Little Rock Public School System for a number of years, and that he is a member of the NAACP; that on April 3 of the current year he and other teachers in the Little Rock system were called upon to submit the affidavits required by Act 10; that he declined to do so on the ground that the statute violated his constitutional rights; and that subsequently he received a letter signed by three members of the Little Rock School Board advising him that his contract had not been renewed for the 1959-60 school year and would not be renewed. By reason of a somewhat peculiar situation that existed with respect to the Little Rock School Board when the suit was filed and on the day of trial, which situation we find it unnecessary to detail,

there is some uncertainty with respect to the exact status of Shelton's contract and those of certain other teachers who declined to submit the Act 10 affidavits. It has been stipulated, however, that the Little Rock School Board will act in conformity with ruling State statutes, and it is plain that if those statutes stand, Shelton will inevitably feel their impact if he has not already done so. Thus, we are satisfied that Shelton's situation presents a case or controversy between him and the Little Rock School District with respect to which this court has jurisdiction.

The claim that this is not a proper class action calls for no extended comment, since it is now well settled that a suit of this kind, while not a "true class action" can be maintained for the benefit of the named plaintiff and "others similarly situated" under the provisions of Rule 23, F. R. C. P., 28 U. S. C. A. (See the full discussion of such an action and of the effect of a judgment therein contained in 3 Moore's Federal Practice, 2d Ed. pp. 3442-50, 3455-56, and 3465-68).

With regard to the contention that this court should not proceed herein until the statutes have been construed by the State courts, we of course, respect the doctrine of "equitable abstention", as it is sometimes called, and it has been applied in this district not infrequently. However, this doctrine is discretionary in its application, not jurisdictional. We see no problems of statutory construction in this case which would move our discretion to stay proceedings as the defendants desire. Cf. NAACP v. Patty, D. C., Va., 159 F. Supp. 503; see also dissenting opinion of Judge Parker in Bryan v. Austin, D. C., S. C. 148 F. Supp. 563, 567. Moreover, this is contract time with the school districts in Arkansas. Both teachers and directors of those districts need to know where they stand with respect to both acts. Should proceedings herein be stayed, inevitably there would be undesirable delay and confusion likely to be accompanied by a multiplicity of suits in various sections of

the State. Accordingly, we are of the view that the public interest calls for a determination of the Constitutional question presented by the record.

While there is certain language in the complaint that may indicate that the plaintiffs feel, at least to a certain extent, that the two statutes must be read together, we feel that they should be considered separately. Cf. Garner v. Los Angeles Board of Public Works, 341 U. S. 716, 720. And in view of certain decisions of the Supreme Court presently to be mentioned, we are satisfied that Act 10 is contitutional. On the other hand, it is clear that Act 115 is unconstitutional.

Act 10, unlike Act 115, does not make past or present membership in any organization a ground for discharge of or for refusal to employ a school teacher or college professor. It simply requires the local school boards and the governing bodies of institutions of higher learning to ascertain the affiliations of their respective faculties. Once that information has been furnished, so far as Act 10 is concerned, the local board or the governing body of a college is free to take any action it may choose with respect to the employment status of a given individual.

A public employer has a right to know the organizations to which its employees, including school teachers, belong or have belonged, or to which they are making or have made financial contributions. This right has been recognized in Garner v. Board, supra; Adler v. Board of Education of the City of New York, 342 U. S. 483; Beilan v. Board of Education, School District of Philadelphia, 357 U. S. 399; and Lerner v. Casey, 357 U. S. 468.

In the Garner case the Court, in upholding a requirement that public employees sign an affidavit revealing whether they had been members of the Communist Party or of the Communist Political Action Association, and if so setting forth the dates and periods of membership, said:

> "We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to fitness and suitability for the public service. Past conduct may well relate to present fitness; past loyalty may well have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment * * *." (341 U. S. at 720)

In Adler v. Board of Education of the City of New York, supra, there was before the Court a challenge of the New York statutes designed to clear subversives from employment in the public school system. It was claimed that those statutes violated the freedom of speech and assembly of persons employed or seeking employment in the public schools. The Court said: "It is clear that such persons have the right under our law to assemble, speak, think and believe as they will. Communications Assn. v. Douds, 339 U. S. 382. It is equally clear that they have no right to work for the State in the school system on their own terms. United Public Workers v. Mitchell, 330 U. S. 75. They may work for the school system upon the reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere * * *" (342 U. S. at 492). A little further on in the opinion, the Court, after announcing that it was adhering to the Garner case, supra, went on to state:

> "* * * A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the

officials, teachers and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted. One's associates, past and present, as well as one's conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one's reputation has been determined in part by the company he keeps. In the employment of officials and teachers of the school system, the state may very properly inquire into the company they keep, and we know of no rule, constitutional or otherwise, that prevents the state, when determining the fitness and loyalty of such persons, from considering the organizations and persons with whom they associate." (342 U. S. at 493).

Garner and Adler were both adhered to less than a year ago in Beilan v. Board of Education, supra, wherein the Court upheld the discharge of a school teacher on account of his refusal to answer questions put to him by his superintendent relative to his communist affiliations and activities. The Court said:

> "By engaging in teaching in the public schools, petitioner did not give up his right to freedom of belief, speech or association. He did, however, undertake obligations of frankness, candor and cooperation in answering inquiries made of him by his employing Board examining into his fitness to serve it as a public school teacher." (357 U. S. at 405)

Further on in the same opinion the Court said that there was no requirement in the Federal Constitution that a teacher's classroom conduct be the sole basis for determining his fitness, and that such fitness "depends on a broad range of factors." (357 U. S. at ——.) In discharging

their annual tasks[3] of selecting new teachers and determining which of the old ones should be retained in employment, Arkansas school boards and college trustees are not concerned alone with the professional training or instructional competency of their employees or applicants for employment, or even with their loyalty to this country. While membership in a subversive organization, such as the Communist Party, is, of course, a relevant factor bearing upon a person's fitness for employment as a school teacher or college instructor, other factors are relevant as well. A school board in undertaking to select teachers is entitled to take into consideration not only an applicant's competency and loyalty, but also his or her personality, habits and manner of living, and social, professional, and political background and affiliations, to the end that it may select not only competent teachers, but those whose employment or retention in employment is to the best interest of all concerned.

This does not mean, of course, that the Legislature can require a local school district or institution of higher learning to make inquiries of its employees or applicants for employment that are wholly irrelevant to their suitability for employment. Thus, in National Association for the Advancement of Colored People v. Alabama, 357 U. S. 449, cited by the plaintiffs, it was held that the Association could not be compelled by a State court to disclose its membership lists in connection with an action brought by the State on account of its alleged noncompliance with the

[3] In considering this case it is important to bear in mind that Arkansas, unlike certain other States, does not have any civil service system for its public school teachers. These teachers usually are hired on a year-to-year basis, and while a wrongful discharge during a school year in breach of contract is actionable, the only specific job security that a teacher has beyond the end of a year is the statutory provision that if a teacher is not notified within 10 days after the end of a school year that his contract has not been renewed, it is automatically renewed for the following year. Ark. Stats. 1947, Section 80-1304(b); Wabbasoka School District No. 7 v. Johnson, 225 Ark. 982, 286 S. W. 2d 841.

Alabama statutes dealing with foreign corporations. The Court said: "* * * The issues in the litigation commenced by Alabama * * * were whether the character of petitioner and its activities in Alabama had been such as to make petitioner subject to the registration statute, and whether the extent of petitioner's activities without qualifying suggested its permanent ouster from the State. Without intimating the slightest view upon the merits of these issues, we are unable to perceive that the disclosure of the names of petitioner's rank-and-file members has a substantial bearing on either of them". (357 U. S. at 464.)

We think that the information required by Act 10 is relevant. The fact that some educators and members of the public may feel that this requirement is unwise, or unnecessary or even insulting does not mean that the statute is unconstitutional. These are considerations of the legislative, not the judicial branch of the government. We hold, however, that the mere failure of a teacher who was a member of the National Association for the Advancement of Colored People, to furnish the affidavit required by Act 10 while Act 115 was ostensibly in effect, thereby making himself ineligible for public employment by the terms of the latter Act, did not and does not compel or justify his discharge or render him ineligible for re-employment.

Taking up Act 115, there can be no question that the Act makes any member of the NAACP ineligible for public employment in the State of Arkansas. Section 3 of the Act, which gives to any person dismissed from or declared ineligible for employment under the provisions of the Act, a right to petition for an order to show cause why a hearing on such charges should not be had, does not change or modify the command of the Act. That section gives one who was dismissed or denied employment on the ground that he was a member of the NAACP, and who claims that he was not a member, an opportunity to obtain a hearing on that issue alone. Once membership is established, then

discharge or a declaration of ineligibility automatically follows. Further, by the terms of the Act one who gives public employment to a member of the NAACP is subject to a fine of not more than $100 for each such offense.

Under the Fourteenth Amendment to the Constitution of the United States, as construed in Wieman v. Updegraff, 344 U. S. 183, and Slochower v. Board of Higher Education of the City of New York, 350 U. S. 511, the statute is clearly unconstitutional since it makes mere membership in the NAACP a ground for dismissal from or a declaration of ineligibility for public employment, regardless of whether the employee or applicant involved had any knowledge of or sympathy with the aims and purposes of the organization, as declared by the Legislature, or had actively participated in the activities found by the Legislature to be anti-social and undesirable, or whether he was completely innocent of such knowledge, sympathy or participation and had joined and was desirous of maintaining his membership in the Association out of sympathy with its publicly announced objectives which are clearly lawful.

Even if the recitals of the preamble to the statute to the effect that the NAACP is devoted to the creation of racial unrest and turmoil are taken at face value, there is no declaration that the purposes and activities of the organization are designed to overthrow the government or that they are violative of any statute.[4]

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[4] See Judge Parker's discussion of a similar preamble to the South Carolina statute involved in Bryan v. Austin, supra. With regard to the statement that the NAACP is a captive of the communist conspiracy, it is to be noted that the Legislature did not find that such was a fact, but simply stated that a committee of the Arkansas Legislative Council had so found; and while the Attorney General of Arkansas testified at the trial of this case that the findings of that committee were before the Legislature when it adopted Act 115, he did not testify that the Legislature itself had ever adopted those findings as its own. Thus, it is unnecessary for us to decide whether the Legislature had a right to make such a finding, or to determine what effect should be given to it had it in fact been made.

While public employing agencies have a wide if not unlimited discretion in selecting their employees, it does not follow that the Legislature can by statute require such agencies to apply a wholly arbitrary and discriminatory standard in hiring and fixing. On the contrary, Wieman v. Updegraff and Slochower v. Board, both supra, establish that such cannot be done.

This Court, of course, cannot do otherwise than follow the decisions just mentioned. Wieman v. Updegraff involved the constitutionality of a statute of Oklahoma which required each state officer and employee, as a condition of his employment, to take an oath stating that he was not, and had not been for the preceding five years a member of any organization listed by the Attorney General of the United States as "communist front" or "subversive" and which statute, as construed by the State Supreme Court, barred persons from state employment solely on the basis of membership in such organization, regardless of their knowledge concerning the activities and purposes thereof. By an opinion in which all the Justices concurred, the Supreme Court held that the Act in suit, as thus construed, violated the Due Process Clause of the Fourteenth Amendment by making persons ineligible for public employment solely on the basis of organizational membership, regardless of their knowledge concerning the organizations to which they had belonged. In so doing the Court distinguished its prior decisions involving state legislation aimed at safeguarding the public service from disloyalty, namely, Garner v. Board of Public Works, supra; Adler v. Board of Education, supra, and Gerende v. Board of Supervisors, 341 U. S. 56.

In the course of its opinion the Court said:

> "There can be no dispute about the consequences visited upon a person excluded from public employment on disloyalty grounds. In the view of the community, the stain is a deep one; indeed, it has become

> a badge of infamy. Especially is this so in time of cold war and hot emotions when 'each man begins to eye his neighbor as a possible enemy'. Yet under the Oklahoma Act, the fact of association alone determines disloyalty and disqualification; it matters not whether association existed innocently or knowingly. To thus inhibit individual freedom of movement is to stifle the flow of democratic expression and controversy at one of its chief sources. We hold that the distinction observed between the case at bar and *Garner, Adler* and *Gerende* is decisive. Indiscriminate classification of innocent with knowing; activity must fall as an assertion of arbitrary power. The oath offends due process." (344 U. S. at 190-191).

And in Slochower v. Board of Education, supra, it was said:

> • • • • In Wieman v. Updegraff, 344 U. S. 183, we struck down a so-called 'loyalty oath' because it based employability solely on the fact of membership in certain organizations. We pointed out that membership itself may be innocent and held that the classification of innocent and guilty together was arbitrary. This case rests squarely on the proposition that 'constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary and discriminatory'. 344 U. S. at 192." (350 U. S. at 556)

See also Sweezy v. New Hampshire, 354 U. S. 234, 242, 251.

Since the fact of association alone cannot be used to determine disloyalty or disqualification, it is obvious that mere membership in the NAACP cannot be made a bar to public employment.

While the plaintiffs are entitled to a declaratory judgment to the effect that the State of Arkansas cannot constitutionally require that a person be discharged from public employment or be declared ineligible therefor merely because he belongs to the NAACP, from which it necessarily follows that public hiring officials cannot be successfully prosecuted for declining to follow such a standard, it does not follow that this Court, as a court of equity, can compel any school board to hire a person as a teacher, or to retain him in its employment, or to forbid it to discharge him. This is true because of the well settled principle that an equity court, at least in the absence of a statute or of a situation where an employee has a vested right to or interest in his employment, will not interfere by injunction with the power of an employer to determine whom he will employ or retain in his employment. As we have seen, school teachers in Arkansas have no vested rights in their jobs, and no right of re-instatement if wrongfully discharged. If a teacher is discharged in violation of his contract, his remedy is an action for damages. Such being the case, we do not believe that injunctive relief is appropriate here, nor, from a practical standpoint, do we think it necessary at this time.

IT IS, THEREFORE, BY THE COURT CONSIDERED, ORDERED, ADJUDGED AND DECREED:

1. That without objection the motions to dismiss filed herein by Honorable Bruce Bennett, Attorney General of the State of Arkansas, and by Honorable Frank Holt, Prosecuting Attorney of the Sixth Judicial Circuit of the State of Arkansas, are granted without prejudice.

2. That without objection the motions to dismiss filed by the defendants Ralph Mitchell, Jr. and J. C. Langley are granted.

3. That to the extent that the plaintiffs seek declaratory and injunctive relief with respect to Act 10 of the Second Extraordinary Session of the 61st General Assembly of the State of Arkansas, the complaint and amended complaint are without merit and are dismissed with prejudice.

4. That the prayer of the plaintiffs for declaratory relief with respect to Act 115 of the regular session of the 62nd General Assembly of the State of Arkansas be, and the same hereby is granted, and that said statute be, and it hereby is, adjudged to be invalid and unenforceable as contravening the Fourteenth Amendment of the Constitution of the United States.

Dated this ..... day of ....., 1959.

JOHN B. SANBORN
United States Circuit Judge

JOHN E. MILLER
United States District Judge

J. SMITH HENLEY
United States District Judge

IN THE

Supreme Court of the United States

October Term, 1960

No. 14

B. T. SHELTON, *et al.*,

Appellants,

v.

EVERETT TUCKER, JR., President, etc., *et al.*

On Appeal from the United States District Court for the Eastern District of Arkansas

BRIEF FOR APPELLANTS

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BRIEF FOR APPELLANTS

Opinion Below

The opinion of the United States District Court for the Eastern District of Arkansas (R. 103-116) is reported at 174 F. Supp. 351.

Jurisdiction

This suit was initiated pursuant to Title 28, United States Code, Sections 1331, 1343, 2281, 2201 and 2202 seeking a judgment declaring Act 10 (requiring teachers to disclose all organizational activities) of the 1958 2nd Extraordinary Session, and Act 115 (making members of the National Association for the Advancement of Colored People ineligible for public employment) of the 1959 Regular Session of the General Assembly of Arkansas

unconstitutional, as violative of the Fourteenth Amendment to the Constitution of the United States and injunctive relief against their enforcement.

The opinion and judgment of the court below were entered on June 8, 1959 (R. 115), pursuant to which Act 115 was held unconstitutional; and Act 10 was sustained as a proper exercise of state power. Notice of appeal was filed in that court on June 25, 1959 (R. 118-120). Orders extending the time to docket the cause in this Court were entered on August 3, 1959 (R. 121), September 16, 1959 (R. 122), and October 16, 1959 (R. 122-3) by Judge J. Smith Henley, one of the judges who heard the cause in the court below. The statement of jurisdiction was filed on November 23, 1959, and probable jurisdiction was noted on January 25, 1960. Jurisdiction of this Court rests on Title 28, United States Code, Section 1253.

Question Presented

Whether a state may require as a condition of employment that teacher and administrative personnel in public institutions of learning disclose to school authorities all membership, regular contribution or dues paying organizational connections within the past five years, without contravening the constitutional guarantees of academic freedom and freedom of association secured under the due process clause of the Fourteenth Amendment to the Constitution of the United States, where the disclosures thus required are not restricted to activities and associations relevant to a determination of trustworthiness, fitness, reliability, competence or suitability for employment in the school system?

Statute Involved

Act 10, 2nd Extraordinary Session of 1958 of the General Assembly of Arkansas provides as follows:

FOR AN ACT TO BE ENTITLED: "AN ACT TO PROVIDE ASSISTANCE IN THE ADMINISTRATION AND FINANCING OF PUBLIC SCHOOLS, AND TO REQUIRE AFFIDAVITS FROM ADMINISTRATIVE AND PROFESSORIAL EMPLOYEES, INCLUDING SUPERINTENDENTS, PRINCIPALS, AND INSTRUCTORS OF THE ELEMENTARY AND SECONDARY SCHOOLS, AND COLLEGES AND UNIVERSITIES OF THE STATE OF ARKANSAS RELATIVE TO ALL INCORPORATED AND/OR UNINCORPORATED ASSOCIATIONS AND ORGANIZATIONS TO WHICH THEY HAVE BELONGED OR HAVE BEEN AFFILIATED WITH FOR THE PAST FIVE YEARS; TO PROVIDE PENALTIES FOR FAILURE TO COMPLY, AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. It is hereby declared that the purpose of this act is to provide assistance in the administration and financing of the public schools of Arkansas, and institutions of higher learning supported wholly or in part by public funds, and it is hereby determined that it will be beneficial to the public schools and institutions of higher learning and the State of Arkansas, if certain affidavits of membership are required as hereinafter provided.

SECTION 2. No superintendent, principal, or teacher shall be employed or elected in any elementary or secondary school by the district operating such school, and no instructor, professor, or other teacher shall be employed or elected in any institution of higher learning, or other educational institution supported wholly or in part by public funds, by the trustees or governing authority thereof, until, as a condition precedent to such employment, such superintendent, principal, teacher, instructor or professor shall have filed with such board of trustees or governing authority an affidavit as to the names and addresses of all incorporated and/or unincorporated associations and organizations that such superintendent, principal, teacher, instructor or pro-

fessor is or within the past five years has been a member of, or to which organization or association such superintendent, principal, teacher, instructor, professor or other teacher is presently paying, or within the past five years has paid regular dues, or to which the same is making or within the past five years has made regular contributions.

SECTION 3. Such affidavit may be in substantially the following form:

STATE OF ARKANSAS

COUNTY OF .....

I, (name of Affiant), being an applicant for the position of ....., at (name of school or institution), being first duly sworn, do hereby depose and say that I am now or have been within the past five years a member of the following organizations and no others:

(names and addresses of organizations)

and further, that I am now paying, or within the past five years have paid, regular dues or made regular contributions to the following organizations and no others:

(names and addresses of organizations)

.....
Signature of Affiant

Subscribed and sworn to before me this ..... day of .....

.....
Signature and Title of Official

SECTION 4. Any contract entered into by any board of any school district, board of trustees of any institution of higher learning, or other educational institutions supported wholly or in part by public funds, or by any governing authority thereof, with any superintendent, principal, teacher, instructor, professor, or other instructional personnel, who shall not have filed the affidavit required in Section 2

hereof prior to the employment or election of such person and prior to the making of such contracts, shall be null and void and no funds shall be paid under said contract to such superintendent, principal, teacher, instructor, professor, or other instructional personnel; any funds so paid under said contract to such superintendent, principal, teacher, instructor, professor, or other instructional personnel, may be recovered from the person receiving the same and/or from the board of trustees or other governing authority by suit filed in the circuit court of the county in which such contract was made, and any judgment entered by such court in such cause of action shall be a personal judgment against the defendant therein and upon the official bonds made by such defendants, if any such bonds be in existence.

SECTION 5. Every person who shall wilfully file a false affidavit under the provisions of this act shall be guilty of perjury, shall be punished by a fine of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00) and in addition shall forfeit his license to teach in any of the schools, institutions of higher learning, or other educational institutions supported wholly or in part by public funds in this State. All penalties collected under the terms of this act shall be forwarded to the State Treasurer to be placed by him in the common public school fund.

SECTION 6. If any paragraph, sentence, clause, phrase, or word of this act shall be held to be unconstitutional for any reason, such holding of unconstitutionality shall not affect any other portion of this act; nothing contained herein, however, shall be construed so as to affect the validity of any contract entered into prior to the effective date of this act.

SECTION 7. It is hereby determined that the decisions of the United States Supreme Court in the school segregation cases require solution of a great variety of local public school problems of considerable complexity immediately and which involve the health, safety and general welfare of the people of the State of Arkansas, and that the purpose of this

act is to assist in the solution of these problems and to provide for the more efficient administration of public education. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.

This legislation became law on September 12, 1958.

Statement

Appellant Shelton, prior to his refusal to comply with Act 10 and his discharge therefor (R. 127-128), had been employed as a teacher in the public schools of the Little Rock Special School District for 25 years (R. 58). On April 3, 1959, he received from the Superintendent of Schools of the District a memorandum advising him of the terms of Act 10. The notice requested that an affidavit listing all his organizational connections over the past five years be signed and completed in the presence of a notary public and returned on the morning of April 13. It was stated that the statute required that the affidavit be filed with the Superintendent before his teacher contract for the 1959-1960 school year could be issued (R. 59).

Instead of complying, appellant advised the Superintendent in writing that he would not fill out the affidavit because it violated his constitutional rights and the constitutional rights of others (R. 59); and on April 21, 1959, the present class action was instituted (R. 1).

On May 2, 1959, an amended complaint, the basis of the present proceedings, was filed in which appellants, the Arkansas Teachers Association, an organization of Negro teachers in the State of Arkansas, and T. W. Coggs, its Executive Secretary (R. 17), joined in the law suit as parties-plaintiff, suing on behalf of the organization and all of its members currently employed in Arkansas as teacher or administrative personnel in institutions supported wholly or in part by public funds (R. 17). The

constitutionality of Act 10 and Act 115[1] was attacked on the grounds that the statutes were invalid on their face and deprived appellants and the class they represent of liberty and property without due process of law, of the equal protection of the laws, and of rights of freedom of speech and of association (R. 23, 24, 27). Declaratory judgments and injunctive relief were sought (R. 28-29).

As an exhibit to the amended complaint, appellant Shelton attached an affidavit setting forth that he was not a member of any organization which advocated the overthrow of the government by force; that he belonged to the National Association for the Advancement of Colored People to help promote the objects described in paragraph 45 of the amended complaint (R. 26), and that he had no knowledge of anything to indicate that the N.A.A.C.P. was or ever had been a captive of any international conspiracy (R. 29-31).

Pursuant to the provisions of Title 28, United States Code, Section 2284, a special statutory court of three judges was designated by the Chief Judge of the Eighth Circuit in an order dated April 27, 1959 (R. 13-14). A temporary restraining order was entered on May 4, 1959 (R. 35-36), extended on May 13, 1959 (R. 36-37) and on May 25, 1959 (R. 102). Appellees answered (R. 37-39; 40-41; 42-43), alleging that the court was without jurisdiction and that the complaint, as amended, failed to state a claim upon which relief could be granted.

On May 25, 1959 a hearing was held in the court below (R. 44-91). At that hearing testimony was introduced showing that appellant Shelton had been employed as a teacher in the Little Rock Special School District for 25 years (R. 58); that there had never been any complaint about his work (R. 58, 63, 69); that he received a memorandum from Mr. Terrell E. Powell, Superintendent of Schools as alleged (R. 58); that he refused to file the required affi-

[1] Act 115 set out in the appendix, *infra*.

davit (R. 59); that he was advised on May 5, 1960, that his contract would not be renewed for the 1959-60 school term (R. 60); that contracts were usually renewed in May (R. 61); that unless notified to the contrary within ten days after school closes, the teacher is automatically employed for the next school term (R. 79); that he was not a member of the Communist Party or of any organization advocating the overthrow of the government by force (R. 61); that he knew the purposes of the N.A.A.C.P. were to eliminate racial discrimination, secure the vote for all qualified citizens, seek justice in the courts, secure equal job opportunities and eliminate mob violence and police brutality; that these purposes expressed the reasons for his membership in the organization; and that he had no knowledge of the N.A.A.C.P. being a captive of an international Communist conspiracy (R. 62).

Testimony was introduced concerning the Arkansas Teachers Association and its purposes (R. 75-77); that members of the faculty of the Arkansas AM & N College (a college for Negroes) would be required to comply with Act 10, but contracts had not been issued at the time the temporary restraining order was entered (R. 77); that all teacher personnel returning to the Pine Bluff Special School District for the 1959-1960 school term had filed the contested affidavit as required (R. 78-79).

The Attorney General testified that the Special Education Committee of the Legislative Council of the State of Arkansas had made an investigation and had concluded that racial unrest in Arkansas was inspired by the Communist Party, and that the N. A. A. C. P. was "heavily infiltrated with subversives and wittingly or unwittingly" had become a captive of Communist apparatus and that the Council's conclusions had been made available to the legislature when Act 115 was enacted. (R. 81-88).

On June 8 the opinion and judgment here at issue were entered. The court struck down Act 115 as contravening the Fourteenth Amendment to the Constitution of the

United States and entered a declaratory judgment that the state could not require that public employees be discharged merely because of membership in the N. A. A. C. P. Act 10 was sustained, however, on the grounds that decisions of this Court had vindicated the state's authority to require employees to disclose their organizational connections. In reaching this conclusion, the court placed heavy reliance upon *Garner* v. *Los Angeles Board of Public Works*, 341 U. S. 716; *Beilan* v. *Board of Education*, 357 U. S. 399; *Lerner* v. *Casey*, 357 U. S. 468; and *Adler* v. *Board of Education*, 342 U. S. 485 (R. 103-116).

After entry of the judgment below, the Little Rock Special School District notified appellant Shelton that he had until June 25, 1959, to comply with Act 10 (R. 125). When the deadline passed without his filing the required affidavit, appellant was advised on June 30 that his contract would not be renewed for the 1959-60 school term (R. 127-128). These post judgment facts have been made a part of this record pursuant to stipulation of the parties (R. 123-124).

Summary of Argument

Act 10 is another state attempt to mandate conformity and to suppress dissidence in the field of race relations by restrictions which deter the exercise of rights of freedom of association. Here, it is the freedom of association and the privacy of the public school teacher and the public's interest in the maintenance of academic freedom in public institutions of learning which are adversely affected.

The preservation of academic freedom and freedom of association of the individual is of paramount importance, not only as a necessary prerequisite to personal liberty, but as an indispensable ingredient of an open society. See, e. g., *Thomas* v. *Collins*, 323 U. S. 516; *Sweezy* v. *New Hampshire*, 354 U. S. 234; N. A. A. C. P. v. *Alabama*, 357

U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516; *cf.* Mr. Justice Brandeis, concurring in *Whitney* v. *California*, 274 U. S. 357, 373, 376; *Roth* v. *United States*, 354 U. S. 476.

The court below upheld Act 10 on the mistaken assumption that its sweeping interference with academic freedom and the personal liberty and privacy of the school teacher is consistent with decisions of this Court validating state intrusions in this area. But nothing said in *Garner* v. *Los Angeles Board of Public Works*, 341 U. S. 716; *Adler* v. *Board of Education*, 342 U. S. 485; *Beilan* v. *Board of Education*, 357 U. S. 399; or *Lerner* v. *Casey*, 357 U. S. 468, or any other decisions of this Court, countenances the all-inclusive curtailment of academic and personal freedom here involved. While appellants do not disclaim a valid state interest in protecting the integrity of the public school system, it cannot be demonstrated that such protection necessitates the suppression of academic freedom and the teacher's right to freedom of association which results from enforcement of this statute.

The 2nd Extraordinary Session of the General Assembly of Arkansas, at which Act 10 was enacted, was called in the summer of 1958 to promulgate a package of legislation specifically designed to preserve racial segregation in the public schools (R. 91-102). The obvious aim of the statute under contest here was to attempt to close off the classroom from sentiment favoring school desegregation or opposition to the state's decision to defy the Constitution of the United States. Act 115, enacted at the subsequent Regular Session of the General Assembly, in barring public employment to members of the N. A. A. C. P., merely made explicitly applicable to all public employees what Act 10 necessarily implies in respect to teachers, principals and superintendents.

Appellants respectfully submit, therefore, that the striking down of Act 115, without invalidating Act 10 as well, leaves school authorities free to achieve the unconstitutional objectives of Act 115 in the school system.

Moreover, without regard to Act 115, Act 10 is a pernicious and invidious restriction on the freedom of association of the public school teacher. It is now settled law that public employees are not bereft of constitutional rights of freedom of speech and freedom of association. *Wieman* v. *Updegraff*, 344 U. S. 183; *Sweezy* v. *New Hampshire, supra; Beilan* v. *Board of Education, supra; cf.* Mr. Justice Frankfurter's concurring opinion in *Garner* v. *Los Angeles Board, supra,* at 724, 725.

Of course, a state may take appropriate measures to screen teachers to determine their trustworthiness, reliability, fitness and suitability for training the young. See *Beilan* v. *Board of Education, supra; Adler* v. *Board of Education, supra;* and *Lerner* v. *Casey, supra; Garner* v. *Los Angeles Board of Public Works, supra.* Here, however, no relationship between the unqualified disclosures required and appropriate inquiries concerning fitness and suitability has been shown. *Cf. Garner* v. *Los Angeles Board of Public Works, supra; Adler* v. *Board of Education, supra; Lerner* v. *Casey, supra; Beilan* v. *Board of Education, supra.* Nor has any relationship been demonstrated between the statute's stated purposes—administration, financing and benefiting the schools—and the restriction on First and Fourteenth Amendment rights which Act 10 effects. See *N. A. A. C. P.* v. *Alabama, supra; Bates* v. *Little Rock*, 361 U. S. 516.

The rationale of the court below and of the Supreme Court of Arkansas in *Carr* v. *Young*, — Ark. — S. W. — (No. 83, pending here) in upholding Act 10 seems to be that because some associational relationships may be relevant to the issue of teacher fitness, the teacher may be deprived of all rights of freedom of association. But that approach cannot be applied here. While freedom of association and academic freedom are subject to regulation, they may be limited by only the narrowest restriction necessary to meet the specific evil of state concern.. See *Cantwell* v.

Connecticut, 310 U. S. 296, 307; *Thornhill* v. *Alabama*, 310 U. S. 88, 105.

The decisions of this Court recognize the public's vital interest in the maintenance of the freedom of speech and association of the teacher because of the important role the teacher plays in extending the frontiers of knowledge, in helping the young develop a capacity for critical and independent thought, and a discipline of inquiry, open-mindedness and adventurousness. These are essential characteristics of the American personality if our democratic institutions are to survive. See *Wieman* v. *Updegraff*, *supra*; *Sweezy* v. *New Hampshire*, *supra*. The effect of this statute is to render public school teachers spiritless and afraid, fearful of all associations and participation in any activity which school authorities might possibly regard as inappropriate. Thus, intellectual curiosity will be discouraged, and in the classroom only the "safe" ideas are certain to obtain a hearing.

The fact that the statute carries no explicit penalty is unimportant. In Arkansas, teachers must sign new contracts for each forthcoming school year. They are, therefore, under the pressure of constant surveillance as to their associations, their ideas, their beliefs and relationships. They know and understand that they must carefully avoid all questionable and unpopular causes which might be frowned upon by their superiors. Appellants submit that Act 10 constitutes a crude attempt to legislate uniformity in the classroom. As such, it threatens fundamental freedoms protected against governmental intrustion in our society and must not prevail.

ARGUMENT

I.

Act 10 Destroys Academic Freedom and Deprives the Public School Teacher of Freedom of Association and Privacy In Violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Academic freedom is unquestionably one of the great areas of personal liberty preserved from governmental restriction by the First and Fourteenth Amendments to the Constitution of the United States. *Wieman* v. *Updegraff*, 344 U. S. 183; *Sweezy* v. *New Hampshire*, 354 U. S. 234; and see *Adler* v. *Board of Education*, 342 U. S. 485; *Beilan* v. *Board of Education*, 357 U. S. 399; *Lerner* v. *Casey*, 357 U. S. 468; *Slochower* v. *Board of Education*, 350 U. S. 551. Its preservation is deemed fundamental to our society. See *Wieman* v. *Updegraff*, *supra*; *Sweezy* v. *New Hampshire*, *supra*.

Obviously, the teacher's right of freedom of association and privacy outside the classroom are not only aspects of his personal freedom, but essential if academic freedom is to prevail. For if the teacher is to act as a conduit of the knowledge of the past and a bridge to the extensions of knowledge in the future, he must be free of restraints, inhibitions and fears which curb independent thought. Thus Act 10, in restricting the teacher's right of freedom of association, impinges not merely upon the teacher's privacy and liberty as an individual, but affects society's interest in the full development of the minds of the young. A claim, therefore, that a state restricts a teacher's right to freedom of association poses a question of serious constitutional import. See *Wieman* v. *Updegraff*, *supra*; *Sweezy* v. *New Hampshire*, *supra*.

Although the state's interest in maintaining the integrity of the public schools may warrant the promulgation of

regulations designed to insure the character, fitness, trustworthiness, suitability, professional competence and loyalty of the teacher in public institutions of learning, see *Garner* v. *Los Angeles Board of Public Works*, 341 U. S. 716; *Adler* v. *Board of Education*, *supra*; *Beilan* v. *Board of Education*, *supra*; *Lerner* v. *Casey*, *supra*, it does not follow that academic freedom can thereby be destroyed or that the teacher can be deprived of all of his constitutional rights of freedom of association as a condition of public employment. See *Wieman* v. *Updegraff*, *supra*; *Beilan* v. *Board of Education*, *supra*; *cf.* Mr. Justice Frankfurter concurring in *Garner* v. *Los Angeles Board of Public Works*, *supra* at 724, 725; *Sweezy* v. *New Hampshire*, *supra*.

This Court has sustained state inquiries into past and present membership in the Communist Party as appropriate to a determination of fitness and suitability for public employment *Garner* v. *Los Angeles Board of Public Works*, *supra*; *Adler* v. *Board of Education*, *supra*. Dismissal, based upon a refusal to answer questions concerning membership in subversive organizations, was sustained as relevant to a determination that such refusal evidenced a lack of candor and untrustworthiness inappropriate to one in the teaching profession. *Beilan* v. *Board of Education*, *supra*. Yet, a blanket restriction barring from public employment any teacher who had been a member of the Communist Party, *Wieman* v. *Updegraff*, *supra*, and the forced disclosure of the political affiliation of the teacher or the contents of a classroom lecture, *Sweezy* v. *New Hampshire*, *supra*, were invalidated.

The yardstick which is used to measure the propriety of state action affecting freedom of association is whether the state's regulation can be justified as needed to protect some societal interest of compelling importance. *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449. Where such a showing has been made, the restriction will be permitted if the proscriptions are set out in a statute narrowly drawn to meet the supposed evil. See *Cantwell* v. *Connecticut*, 310 U. S. 296, 307;

Thornhill v. *Alabama*, 310 U. S. 88, 105; *Poulous* v. *New Hampshire*, 345 U. S. 395, 404, 405; *Sai* v. *New York*, 334 U. S. 558, 560; *cf. Thomas* v. *Collins*, 323 U. S. 516, 530; *Roth* v. *United States*, 354 U. S. 476, 488, provided there is a relevant connection between the curtailment effected and the valid objective the statute seeks to attain. *Cf. N.A.A.C.P.* v. *Alabama*, *supra*; *Bates* v. *Little Rock*, 361 U. S. 516; *Butler* v. *Michigan*, 352 U. S. 380, 383; *Smith* v. *California*, 361 U. S. 147. In *Garner* and *Beilan*, the state's acts measured against this yardstick were upheld, but in *Wieman* and *Sweezy* the restrictions were struck down as in excess of the state's power.

Here again the Court is faced with the basic problem with which it was confronted in those cases. Individual rights of freedom of association and the public interest in the maintenance of the free flow of knowledge in the classroom must be weighed against the state interest in protecting the integrity of its school system.

But, appellants submit, this case poses little of the difficulty or subtlety with which the Court in *Garner* and *Beilan* had to concern itself. Here Act 10 effects a sweeping curtailment of the liberty of the public school teacher and drastically interferes with academic freedom. Assuming that the statute may be read without regard to the fact that it was enacted at the 2nd Extraordinary Session to impede implementation of the constitutional rights of Negro children to a public education free of discrimination (see *infra*), the statute's objectives, vaporous and amorphous as stated, are to provide "assistance in the administration and financing" and to benefit the public schools (See § 1, *ante*). No mention is made of teacher fitness, suitability or trustworthiness. Neither by its terms, nor as construed, is Act 10 limited solely to disclosures relevant to that determination.

While freedom of association and academic freedom are not absolutes, the Court, in determining the validity of a governmental deterrent affecting those freedoms, must

reach decision pursuant to a formula which accords the "widest scope of freedom . . . to the adventurous and imaginative exercise of the human spirit." Mr. Justice Frankfurter, concurring in *Kingsley Corp.* v. *Regents of the University of New York*, 360 U. S. 684, 694, 695.

As Mr. Justice Brennan said in *Roth* v. *United States*, *supra* at page 488:

> . . . The door barring federal and state intrusion into this area [of freedom of speech and association] cannot be left ajar; it must be tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests.

This statute does complete violence to that principle. It infringes freedom of association and curbs academic freedom to a far greater degree than is essential to secure whatever countervailing legitimate state interest may be involved. See *Butler* v. *Michigan*, *supra*; *Smith* v. *California*, *supra*. As such, the statute is unconstitutional on its face. See *Cantwell* v. *Connecticut*, *supra*; *Carlson* v. *California*, 310 U. S. 106; *Lowell* v. *Griffin*, 303 U. S. 404, 451; *Milk Wagon Drivers Union* v. *Meadowmoor*, 312 U. S. 287, 297; *Staub* v. *Baxley*, 355 U. S. 313, 321.

Moreover, there is no showing that curtailment of teacher freedom and privacy will in any way aid in administrating, financing or benefiting the schools. Indeed, the result most likely to flow from enforcement of the statute is stultification, stodginess and repression in the classroom. What Mr. Justice Douglas said in *Adler* v. *Board of Education*, *supra* at pp. 508, 509, 510 in dissent bears repeating here:

> . . . Fearing condemnation [the teacher] will tend to shrink from any association that stirs controversy. In that manner freedom of expression will be stifled.
>
> . . .
>
> . . . Supineness and dogmatism take the place of inquiry. A 'party line'—as dangerous as the 'party

> line' of the Communists—lays hold. It is the 'party line' of the orthodox view, of conventional thought, of the accepted approach. A problem can no longer be pursued with impunity to its edges. Fear stalks the classroom. The teacher is no longer a stimulant to adventurous thinking, she becomes instead a pipeline for safe and sound information. A deadening dogma takes the place of free inquiry. Instruction tends to become sterile, pursuit of knowledge is discouraged, discussion often leaves off where it should begin.

This, in sum, sets forth the basic reasons why the instant statute is at war with First and Fourteenth Amendment guarantees of personal freedom.

The fact that the statute merely requires the organizational relationship to be disclosed without necessitating the discontinuance of employment therefor does not save it from condemnation. The deterrent effect is the same. The pressures on the teacher to conform, to play it safe, and not to exercise his constitutional rights of freedom of association will be as intense, as if the statute provided a specific penalty for deviations from the norm. His job is still very much at stake and his freedom greatly circumscribed. See *N.A.A.C.P.* v. *Alabama, supra.* The teacher will fear and shun all controversial activities. He will fear, in fact, to engage in any activity, however lawful, which is believed to be objectionable to school authorities. The infringements on freedom which Act 10 effects endanger the basic structure of our society, and, it is respectfully submitted, the statute must fall.

II.

Act 10 Is Designed to Prevent Exposure In the Classroom to Any Views At Variance With the State's Policy in the Field of Race Relations.

As has been stated, Act 10 was enacted at the 2nd Extraordinary Session of the General Assembly of Arkansas in 1958. The purpose of this legislative session was to devise

ways to avoid and impede the implementation of this Court's decision in The School Segregation Cases (R. 91-101). All legislation proposed and adopted at this session was aimed at the continued preservation of segregation in the state's school system (R. 99-100). Act 10 was a part of the package of legislation adopted and, as is clear on its face, its objective was to assist in the accomplishment of the overall purpose which the other legislation sought to serve.

Act 10 unquestionably and openly seeks to achieve an enforced conformity on the issue of school desegregation in all public institutions of learning. Obviously, membership in the N.A.A.C.P. or support of its views is not favored by state authorities (R. 95-99). This official attitude, implicit in Act 10, became unmistakably clear with the enactment of Act 115 which rendered membership in the N.A.A.C.P. a basis for disqualification for public employment.

The striking down of Act 115, appellants respectfully submit, without at the same time striking down Act 10, does not remedy the evil which Act 115 sought to accomplish. School authorities may now achieve through the indirect means which Act 10 affords all that was held beyond the state's reach in Act 115. Few teachers, who desire to remain in the school system, will become or remain members or contributors of the N.A.A.C.P., as long as their connection with that organization must be disclosed to school authorities as a condition of continued employment. Thus, the right of association in the N.A.A.C.P. to engage in lawful activity to improve the Negro's status, upheld against state interference in *N.A.A.C.P.* v. *Alabama, supra;* and *Bates* v. *Little Rock, supra,* is now denied to teachers in public institutions in Arkansas.

Moreover, Act 10 effectively bars membership in any organization favoring desegregation or opposed to the state's racial policies. In depriving the teacher of rights of freedom of association in respect to dissident organizational activity in the field of race relations, Act 10 prevents

examination and discussion of the merits of concepts of racial equality and the fallacy of concepts of white supremacy. As injurious as Act 10 is in stifling discussion on these issues, its harm is far more extensive and pernicious. Today, conformity to the view that racial segregation must prevail is the present objective of the law, but the statute can be used with equal effectiveness to stifle any dissident ideas or the discussion of any unorthodox view in the classroom.

To paraphrase Mr. Justice Douglas—so long as the teacher meets appropriate standards of trustworthiness, suitability and fitness, his private life, political philosophies and social creed should be free from scrutiny of the state. Since the state has demonstrated no justifiable basis for its sweeping curtailment of the fundamental constitutional rights here involved, appellants respectfully submit, Act 10 must be struck down.

CONCLUSION

Wherefore, for the reasons hereinabove stated, the judgment of the court below should be reversed.

Respectfully submitted,

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Appendix

Act 115 of 1959

An Act to Make Unlawful the Employment by the State, School District or Any County or Municipality Thereof of Any Member of the National Association for the Advancement of Colored People, and to Provide Penalties for Violations

WHEREAS, the National Association for the Advancement of Colored People has, through its program and leaders in the State of Arkansas, disturbed the peace and tranquility which has long existed between the White and Negro races, and has threatened the progress and increased understanding between Negroes and Whites; and

WHEREAS, the National Association for the Advancement of Colored People has encouraged and agitated the members of the Negro race in the belief that their children were not receiving educational opportunities equal to those accorded white children, and has urged the members of the Negro race to exert every effort to break down all racial barriers existing between the two races in schools, public transportation facilities and society in general; and

WHEREAS, the National Association for the Advancement of Colored People has made a strenuous effort to imbue the members of the Negro race with the belief that they are the subject of economic and social strangulation which will forever bar Negroes from improving their standard in life and raising their standard of living to that enjoyed by the White race; and

WHEREAS, the General Assembly believes that in view of the known teachings of the National Association for the Advancement of Colored People and the constant pressure exerted on its members contrary to the principles upon which the economic and social life of our States rests, and that the National Association for the Advancement of

Colored People is so insidious in its propaganda and the fostering of those ideas designed to produce a constant state of turmoil between the races, that membership in such an organization is wholly incompatible with the peace, tranquility and progress that all citizens have a right to enjoy; and

WHEREAS, the Special Education Committee of the Arkansas Legislative Council has found that the National Association for the Advancement of Colored People is a captive of the international communist conspiracy; Now, THEREFORE, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. It shall be unlawful for any member of the National Association for the Advancement of Colored People to be employed by the State, school district, county or any municipality thereof, and such prohibition against employment by the State, school district, county or any municipality thereof shall continue so long as membership in the National Association for the Advancement of Colored People is maintained.

SECTION 2. The board of trustees of any public school or State supported college shall be authorized to demand of any teacher or other employee of the school, who is suspected of being a member of the National Association for the Advancement of Colored People, that he submit to the board a written statement under oath setting forth whether or not he is a member of the National Association for the Advancement of Colored People, and the immediate employer of any employee of the State or of any county or municipality thereof is similarly authorized in the case any employee is suspected of being a member of the National Association for the Advancement of Colored People. Any person refusing to submit a statement as provided herein, shall be summarily dismissed.

SECTION 3. A person dismissed from, or declared ineligible for, employment under the provisions of this act, may

within four months of such dismissal or declaration of ineligibility be entitled to petition for an order to show cause before any circuit court of the State why a hearing on such charges should not be had. Until the final judgment on said hearing is entered, the order to show cause shall stay the effect of dismissal or ineligibility based on the provisions of this act. The hearing shall consist of the taking of testimony in open court with opportunity for cross-examination. The burden of sustaining the validity of an order of dismissal or declaration of ineligibility by a fair preponderance of the credible evidence shall be upon the person making such dismissal or declaration of ineligibility.

SECTION 4. Any person employing any individual contrary to the provisions of this act shall be subject to a fine of not exceeding one hundred dollars ($100.00) for each separate offense.

SECTION 5. All laws or parts of laws inconsistent herewith are hereby repealed.

SECTION 6. It has been found and is declared by the General Assembly of Arkansas that the National Association for the Advancement of Colored People has operated in the State of Arkansas in such a manner as to create a state of turmoil between the races, which is incompatible with the public welfare, and that enactment of this bill will tend to alleviate some of the adverse activities of such organization. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.

APPROVED: February 24, 1959.

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SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 14—No. 83

B. T. SHELTON, *et al.*, *Appellants*

v. No. 14

EVERETT TUCKER, JR., PRESIDENT, ETC., *et al.*, *Appellees*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

MAX CARR, *et al.*, *Petitioners*

v. No. 83

R. A. YOUNG, *et al.*, *Respondents*

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARKANSAS

BRIEF FOR APPELLEES AND RESPONDENTS

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QUESTIONS PRESENTED

The questions presented by Appellants in No. 14 and by Petitioners in No. 83 are substantially identical. In each the issue is drawn on whether Act 10 is unconstitutional on its face by virtue of conflict with the Fourteenth Amendment to the Constitution of the United States. In No. 14 the rights secured by that Amendment suggested to be violated by the Act are academic freedom and freedom of association. In No. 83 both of these rights are mentioned and there is also suggested a deprivation of rights of speech, press and religion.

STATEMENT

The statements of appellants and petitioners are adequate to acquaint the Court with the factual background of the cases. However, we do not concede, nor does the competent evidence in the Record support, petitioners' statements that the purpose of calling the Second Extraordinary Session of the General Assembly of Arkansas in 1958 was that "of enacting anti-desegregation legislation." (Petitioners' Brief 6).

SUMMARY OF ARGUMENT

The motives of the Governor, Attorney General and members of the legislature in connection with the adoption of Act 10 are immaterial to any question before this Court. *Doyle* v. *Continental Ins. Co.*, 94 U.S. 535; *Barenblatt* v. *United States*, 360 U.S. 109.

The relevance of the information required by Act 10 to the determination of teacher fitness, suitability or trustworthiness is the point upon which issue is joined in this case. Both Congress and the legislatures of the States have a broad power to impose conditions upon public employment. *United Public Workers* v. *Mitchell*, 330 U.S. 75; *Garner* v. *Board of Public Works*, 341 U.S. 716. Relevance to fitness and suitability for the position held or sought marks the limits prescribed by this Court of the public employer's inquiry into the otherwise private affairs of its employees. *Gerende* v. *Board of Supervisors of Elections*, 341 U.S. 56; *Garner* v. *Board of Public Works*, *supra*.

The peculiar duties and responsibilities of a teacher make relevant a broader area of inquiry by the public employer than is the case with less sensitive avocations.

Adler v. *Board of Education*, 342 U.S. 485. Act 10, unlike the mandates in *Garner* and *Adler*, is not a disqualifying enactment and requires information relevant to promotion and reassignment decisions as well decisions on the fitness of an individual to teach at all.

Wieman v. *Updegraff*, 344 U.S. 183, and *Sweezy* v. *New Hampshire*, 354 U.S. 234, do not restrict the power of the State exercised by the adoption of Act 10, and there is no dispute in this case about the concept of constitutional protection for academic freedom as it was treated in those decisions. It is also clear that *Slochower* v. *Board of Education*, 350 U.S. 551, prescribes no inhibitions against relevant inquiry by the public employer.

There is no constitutional requirement that a teacher's classroom conduct be the sole basis for determining his fitness. A broad range of factors, including conduct away from the school house, is relevant in making this determination. *Beilan* v. *Board of Education*, 357 U.S. 399.

Any employee, public or private, owes the fundamental duty of candor and frankness to his employer with regard to his fitness for the position held or sought, and this is especially true in the case of a public school teacher. *Beilan* v. *Board of Education, supra; Lerner* v. *Casey*, 357 U.S. 468. This obligation is recognized by professional organizations of teachers as well as the courts. 42 A.A.U.P. 49, 96. A legislative requirement that the obligation be discharged is not inconsistent with the concept of due process as defined by this Court *Hebert* v. *Louisiana*, 272 U.S. 312; *Palko* v. *Connecticut*, 302 U.S. 319.

N.A.A.C.P. v. *Alabama*, 357 U.S. 449, and *Bates* v. *Little Rock*, 361 U.S. 516, hold only that the information there sought was not relevant to the asserted governmental purpose involved and thus are clearly distinguishable from the cases at bar. The contention that the purpose of Act 10 is purely one of exposure raises no material issue cognizable to this Court. *Barenblatt* v. *United States, supra.* Argument that Act 10 is capable of being unconstitutionally applied is, at best, premature in these proceedings. Nor can Act 115, adopted at a subsequent session of the legislature and four months thereafter declared unconstitutional by a court of competent jurisdiction, affect in any way the validity of Act 10 because Act 115 was wholly unrelated to Act 10 and is no longer in existence.

The questions of the wisdom or necessity of Act 10 are not properly addressed to this Court. *Lerner* v. *Casey, supra; United Public Workers* v. *Mitchell, supra; Atkin* v. *Kansas*, 191 U.S. 207.

The Act is valid on its face.

ARGUMENT

I

THE MOTIVES OF THE GOVERNOR AND OF THE LEGISLATURE IN CONNECTION WITH THE ADOPTION OF ACT 10 HAVE NO BEARING ON CONSIDERATIONS OF CONSTITUTIONALITY OF THE ACT

In an effort to condemn the Act in question with the "guilt by association" device, appellants and respondents have filled the Records in these cases with materials which could have no purpose but to make a purported demonstration of the motives or intentions of the Governor and the Legislature in their respective activities connected with the adoption of the Act. The address of the Governor to the General Assembly was introduced, over defense objections, in both cases. (No. 14 Pl. Ex. 1; R.55, 91—No. 83 Pl. Ex. 5; R.97, 114). The State Senator who introduced the bill was questioned as to its purpose (No. 83; R.104) as was the State Attorney General whose office had performed some of the work in drafting it. (No. 83; R.83). Petitioners pursue this inquiry into motives in the argument contained in their Brief asserting that the Act was adopted "by the Arkansas Legislature to achieve the over-all purpose of noncompliance with the decision in *Brown v. Board of Education*, 347 U.S. 483." The same assertion is made by appellants in their Brief where it is said that "The obvious aim of the statute under contest here was to attempt to close off the classroom from sentiment favoring school desegregation or opposition to the State's decision to defy the Constitution of the United States."

It has long been settled that in testing the constitutionality of an Act the courts cannot search for motive or intention. "If the Act done by the State is legal, is not in violation of the Constitution or laws of the United States, it is quite out of the power of any court to inquire what was the intention of those who enacted the law." *Doyle* v. *Continental Ins. Co.*, 94 U.S. 535. The futility of such an inquiry was pointed out in *Shuttlesworth* v. *Birmingham Board of Education*, 162 F. Supp. 372, affirmed 358 U.S. 101, where it was said that motives vary from one individual member of the Legislature to another, and that "As there is no one corporate mind of the legislature, there is in reality no single motive."

The principle has been reaffirmed by this Court as recently as *Barenblatt* v. *United States*, 360 U.S. 109, 132, in the following language:

> "So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power. *Arizona* v. *California*, 283 U.S. 423, 455, 75 L. ed. 1154, 1165, 57 S. Ct. 522, and cases there cited. 'It is, of course, true,' as was said in *McCray* v. *United States*, 195 U.S. 27, 49 L. ed. 78, 24 S. Ct. 769, 1 Ann Cas 561, 'that if there be no authority in the judiciary to restrain a lawful exercise of power by another department of the government, where a wrong motive or purpose has impelled to the exertion of the power, that abuses of a power conferred may be temporarily effectual. The remedy for this, however, lies, not in the abuse by the judicial authority of its functions, but in the people, upon whom, after all, under our institutions, reliance must be placed for the correction of abuses committed in the exercise of a lawful power.'"

The irrelevance of the motives of the Governor, Attorney General and the members of the General Assembly to the questions before the Court appears to be so clearly settled by the prior decisions of this Court that we do not here attempt to answer or refute the factual assertions and arguments advanced in this area by appellants and petitioners. Our decision to so treat the matter is prompted solely by the desire to avoid undue extension of this brief discussing irrelevant matters. Certainly we entertain no apprehension that if the matters were relevant, and if a full and proper judicial inquiry were directed to them, the motives of all of these officers prompting their official acts would be consistent with the oaths taken by each to uphold the Constitution of the United States. As pointed out in *Shuttlesworth* v. *Birmingham Board of Education, supra*, public officials are entitled to this presumption.

II

ACT 10 IS A CONSTITUTIONAL EXERCISE OF POWER OF THE STATE LEGISLATURE TO PROVIDE FOR THE ADMINISTRATION OF THE PUBLIC SCHOOLS

The Act in question requires that as a condition precedent to employment in the public schools teachers and supervisory personnel shall file with the appropriate governing board an affidavit listing the associations and organizations to which they are or within the past five years have been members, and those to which they are, or during the same period have been, making regular contributions or paying dues. Furnishing the information only is required. There is no sanction contained in the Act that if membership in the Communist Party, or in any other named organization, is thus revealed dis-

missal and disqualification must follow. The Act, of course, provides a corollary duty to the furnishing of the information—it requires the governing board to obtain the information prior to entering into employment contracts.

It is charged that these requirements prescribed by the State in connection with the operation and administration of its public schools are unconstitutional on their face. It is not argued that the five-year retrospective effect of the Act contributes to the alleged invalidity. Indeed such a five-year period of inquiry into past activity by municipal employers was specifically approved by this Court in *Garner* v. *Board of Public Works*, 341 U.S. 716. The principal contention of both appellants and petitioners (aside from the matter of motives) is that the information required by the Act is not relevant to a determination of teacher fitness, suitability or trustworthiness. It is on this contention that issue can be joined.

While no one would contend that entry upon public employment constitutes an abdication of all constitutional rights, it is equally clear that there is necessarily a broad permissible area of legislative regulation with respect to employees who are paid from the public treasury. Thus it was held that there was no constitutional objection to a prohibition by Congress of partisan political activity on the part classified federal employees. *United Public Workers* v. *Mitchell*, 330 U.S. 75. It was pointed out in *Garner* v. *Board of Public Works*, *supra*, that the power of a state is not less than that of Congress in this field.

It was held that a state law requiring candidates for municipal office to file an affidavit disavowing activity directed toward overthrow of the government by force or violence, or knowing membership in an organization

engaged in such an attempt, was valid in *Gerende* v. *Board of Supervisors of Elections*, 341 U.S. 56. An ordinance of the City of Los Angeles requiring of its employees, as a condition to continued employment, an oath denying advocacy of overthrow of the government by unlawful means and an affidavit disclosing present or past membership in the Communist Party was sustained against a broad constitutional attack in *Garner* v. *Board of Public Works*, *supra*. While this is not the most recent treatment by this Court of questions similar to those presented by the cases at bar, it does furnish a clear definition of the permissible area of inquiry of public employers. It is said:

> "We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability for the public service. Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment. The affidavit requirement is valid."

Thus relevance to fitness and suitability for the position held or sought marks the limits prescribed by this Court of the public employer's inquiry into the otherwise private affairs of its employees.

In the *Garner* case inquiry into advocacy of overthrow of the government by unlawful means and membership in the Communist Party was regarded to be relevant to the question of fitness or suitability to hold any position of municipal employment in the City of Los Angeles. There is no attempted distinction between its applicability to the street cleaners and to the Mayor. In *Adler* v.

Board of Education, 342 U.S. 485, a more homogeneous group of public employees was affected. There a state law providing for the disqualification and removal of public school teachers who advocate the overthrow of the government by unlawful means or who belong to organizations which have like purposes was held valid. The Court specifically rejected the suggestion that the decision in the *Garner* case should not be followed, and announced adherence to that case. In language squarely applicable to the cases at bar, the Court describes those aspects of the teaching profession which make relevant inquiry of its members that perhaps would not be so when directed to public employees charged with a less critical responsibility:

> "A teacher works in a sensitive area in a school room. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted. One's associates, past and present, as well as one's conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one's reputation has been determined in part by the company he keeps. In the employment of officials and teachers of the school system, the state may very properly inquire into the company they keep, and we know of no rule, constitutional or otherwise, that prevents the state, when determining the fitness and loyalty of such persons, from considering the organizations and persons with whom they associate."

The foregoing language of this Court goes straight to the heart of the question of the relevance of the information required by Act 10 to the suitability or fit-

ness of teachers for their positions. The public board charged with administering the schools is entitled, in fact is duty bound, to maintain for the school system both integrity and public respect. This it must do through an exercise of judgment which approaches soundness at a pace in direct ratio to the extent that it is enlightened by the facts concerning the individuals under consideration.

It should be remembered that unlike the ordinance in *Garner* and the statute in *Adler*, Act 10 is not a disqualifying enactment. It does not provide for the removal of anyone from any position. The information required by it is available equally to judge the fitness of employees for different assignments and promotions as it is to judge their fitness to teach at all. The interests, civic activities and perhaps specialized knowledge which membership in various organizations would tend to reveal are of no less interest to school authorities in determining which teacher is best prepared for advancement to a principal's position than is similar information to a private employer making a decision with regard to promoting one of his subordinates. Revelation of membership by the physical education instructor in historical societies could lead to better use of his talents and interests, and membership by the teacher of practical medicine for future homemakers in the Church of Christ Scientist might properly lead the governing board to make a teaching assignment for which it felt the teacher was better fitted.

Following *Adler* this Court decided *Wieman* v. *Updegraff*, 344 U.S. 183, invalidating an Oklahoma statute requiring a loyalty oath of all state officers and employees to the effect that they had not been members of any organization on the "Attorney General's List" within the five preceding years. The basis of conflict of this stat-

ute with the Fourteenth Amendment was that it created a conclusive presumption of disloyalty based on membership alone without regard to the knowledge of the person at the time of membership of the nature and purpose of the organization. This statute, like *Garner* and *Adler* but unlike Act 10, was a disquilifying enactment effecting the removal of public employees who would not, or could not, take the oath it prescribed.

Wieman is cited by appellants and petitioners along with *Sweezy* v. *New Hampshire*, 354 U.S. 234, in support of the general proposition that academic freedom is within the protection of the Constitution. We certainly have no quarrel with this concept.

The attack on Act 10 can draw no support from *Slochower* v. *Board of Education*, 350 U.S. 551, which held to violate due process a provision in the Charter of the City of New York requiring discharge of any city employee who invoked the privilege against self-incrimination to avoid answering questions relating to his official conduct. The privilege was invoked by a municipal college professor before a United States Senate Subcommittee and was employed to avoid giving information already possessed by municipal authorities. Again the distinction can be drawn that this statute, unlike Act 10, disqualified and required removal of the class of persons which it reached. However the fundamental consideration that distinguishes *Slochower* from the cases at bar is that there was no refusal there to furnish information to the public employer. The distinction is carefully defined by Mr. Justice Clark speaking for the majority as follows:

> "It is one thing for the city authorities themselves to inquire into Slochower's fitness, but quite another for his discharge to be based en-

> tirely on events occurring before a federal committee whose inquiry was announced as not directed at 'the property, affairs, or government of the city, or . . . official conduct of city employees'."

That *Slochower* prescribes no inhibtions against relevant inquiry by the public employer is reaffirmed in *Beilan* v. *Board of Education*, 357 U.S. 399. There this Court sustained dismissal of a pupblic school teacher under a Pennsylvania statute permitting such a discharge for "incompetency". The finding of incompetency was predicated on the teacher's refusal to answer a question of his superintendent as to his membership in the Communist Party. Listing, apparently with approval, the various disqualifying grounds contained in the Pennsylvania teacher tenure law and similar statutes of other states, the Court says:

> "We find no requirement in the Federal Constitution that a teacher's classroom conduct be the sole basis for determining his fitness. Fitness for teaching depends on a broad range of factors."

A classic example of activity distant from the school house which was properly considered to justify discharge of a public school teacher appears in *Horosko* v. *Mt. Pleasant Twp. School Dist.*, 335 Pa. 369, 6 A. 2d 866, and is discussed in the *Beilan* opinion. In the *Horosko* case the discharge was classified under the statutory ground of "incompetency" and was based on the teacher's after-hours activity in her husband's beer garden, serving as a bartender and waitress, and engaging in allied activities. The information required by Act 10 could well reveal similar activities by teachers inconsistent with the best interests of the school system. It does not seem too remote to suggest that it may be well known that Local Chapter 202 of the United Aesthetic Society is, in

fact, a place engaged principally in dispensing alcoholic beverages in violation of local laws, is frequented by prostitutes and is the site of regular brawls and disorders. Revelation of membership in this organization might well lead the public employer to reassess all relevant information as to the suitability and fitness of a teacher.

Appellants and petitioners seem to overlook the fundamental duty of frankness and candor with regard to his fitness for the position held or sought owed by any employee, public or private to his employer. That duty, as it rests on a public school teacher is described in *Beilan* in this language:

> "By engaging in teaching in the public schools, petitioner did not give up his right to freedom of belief, speech or association. He did, however, undertake obligations of frankness, candor and cooperation in answering inquiries made of him by his employing Board examining into his fitness to serve it as a public school teacher."

The failure to discharge this obligation resulted in the dismissal of a municipally employed subway conductor, a position considerably less demanding of responsibility than that of a teacher, and the public employer's action was approved by this Court in *Lerner* v. *Casey*, 357 U.S. 468. Lerner refused to answer a question put by his employer as to his membership in the Communist Party, and relied on the privilege against self-incrimination in his refusal. The Court points out that the discharge was grounded on a finding of doubtful trust and reliability based on Lerner's lack of frankness, and not on his invocation of the Fifth Amendment's protection.

Recognition of the obligations of candor resting on members of the teaching profession has not been limited to the courts, Congress, legislatures and public employers

alone. These obligations are generally recognized by the professional organizations of the teachers themselves as indicated by the following statement in 42 American Association of University Professors Bulletin 96:

> "As in all acts of association, the professor accepts conventions which become morally binding. Above all, he owes his colleagues in the university complete candor and perfect integrity, precluding any kind of clandestine or conspiratorial activities. He owes equal candor to the public. If he is called upon to answer for his convictions it is his duty as a citizen to speak out. It is even more definitely his duty as a professor. Refusal to do so, on whatever legal grounds, cannot fail to reflect upon a profession that claims for itself the fullest freedom to speak and the maximum protection of that freedom available in our society. In this respect, invocation of the Fifth Amendment places upon a professor a heavy burden of proof of his fitness to hold a teaching position and lays upon his university an obligation to reexamine his qualifications for membership in its society.
>
> ". . . When the powers of legislative inquiry are abused, the remedy does not lie in noncooperation or defiance; it is to be sought through the normal channels of informed public opinion."

This statement of position of the A.A.U.P. was adopted in 1953 and is quoted in the dissenting opinion in *Slochower*. A later statement appearing at 42 A.A.U.P. Bull. 49 (1956) reaffirms the position that lack of candor is relevant to fitness as a teacher in this language:

> "The fact that a faculty member has refused to disclose information to his own institution is relevant to the question of fitness to teach, but not decisive. . . . Nevertheless, members of the teaching profession should recognize that sincerity cannot be judged objectively and that a college

> or university is entitled to know the facts with which it must deal. This is especially true when a faculty member's activities, whether or not they are blameworthy, have resulted in publicity hurtful to his institution. Accordingly, in any proper inquiry by his institution, it is the duty of a faculty member to disclose facts concerning himself that are of legitimate concern to the institution, namely, those that relate to his fitness as a teacher . . ."

The disclosure required by Act 10 is attacked as impinging upon the rights secured by the due process clause of the Fourteenth Amendment. Against the background of the almost universally recognized duty of the public school teacher of candor and frankness to his institution's governing board can this requirement of disclosure be classified as inconsistent "with the fundamenta' principals of liberty and justice which lie at the base of all our civil and political institutions" as the scope of due process was defined in *Hebert* v. *Louisiana*, 272 U.S. 312, 316, or as "a practice repugnant to the conscience of mankind" as that language was employed in *Palko* v. *Connecticut*, 302 U.S. 319, 323? We submit that it cannot.

National Asso. for Advancement of Colored People v. *Alabama*, 357 U.S. 449, does not limit the power of a state to acquire information relevant to a legitimate governmental purpose. The holding there was merely to the effect that the membership lists which the Alabama Circuit Court ordered to be produced were not relevant to the issue then before that Court regarding whether the N.A.A.C.P.'s activities in Alabama had been such as to bring it within the scope of that State's foreign corporation registration statute. *Bates* v. *Little Rock*, 361 U.S. 516, turned on the same distinction. It was there held that there was "no relevant correlation between the power of the municipalities to impose occupation license

taxes and the compulsory disclosure and publication of membership lists of the local branches of the National Association for the Advnacement of Colored People." In order for these two cases to govern the disposition of the ones at bar it would be necessary for the Court to hold that the information required by Act 10 is wholly irrelevant to the proper administration of the public school system and the determination of fitness and suitability of teachers. Such a holding would be contrary not only to logic but also to the teachings of this Court in *Adler* and *Beilan*. Indeed, the relevance of the required information is so clear that the Supreme Court of Arkansas commented that "It cannot be doubted that the information would often be of real value to the employing school board." (*Carr* v. *Young*, ... Ark. ....., 331 S.W. 2d 701) and the three-judge District Court held that "We think that the information required by Act 10 is relevant." (*Shelton* v. *McKinley*, 174 F. Supp. 351.)

The real objection to Act 10 that underlies the arguments of both appellants and petitioners is the contention that its purpose is to expose membership in unpopular organizations. It has already been pointed out as a general proposition that the courts are without power to search for motives which prompted legislation, and *Barenblatt* v. *United States*, 360 U.S. 109, comes directly to grips with the specific matter of "exposure" as a legislative purpose. There the Court held that it was immaterial that the objective of the Congress and of its Committee in conducting an investigation might have been purely one of exposure. It was again pointed out that so long as the legislative branch acts in pursuance of its constitutional power, the judiciary lacks authority to intevene on the basis of the motives which spurred the exercise of that power.

Petitioners argue that the possibility that the information contained in the affidavits will not be kept confidential makes Act 10 unconstitutional. This is simply an argument that the statute could be put to an unconstitutional use. There are few statutes which cannot be administered in an improper manner. The remedy for that is to attack the objectionable administration if and when it occurs. The Supreme Court of Arkansas, in construing the statute held that "the permissible purpose of the statute is to enlighten the school board alone" and "that the affidavits need not be opened to public inspection". *Carr* v. *Young, supra.* Since the statute does not provide for public inspection of the affidavits, and since, as said by the Supreme Court of Arkansas, ". . . the proof does not show any inclination on the part of any school board to use Act 10 in a discriminatory manner", there is no proper occasion to speculate at this time with regard to possibilities of future abuses of the statute.

The suggestion by appellants that Act 115 of the Acts of Arkansas of 1959, adopted in February, 1959, and held unconstitutional by the court below in No. 14 in June, 1959, should in some way affect the constitutionality of Act 10 which was enacted at an entirely different session of the General Assembly in September, 1958, does not merit extensive rebuttal. It is unnecessary to consider the question of whether these two wholly unrelated Acts while concurrently in force would achieve an unconstitutional end. This question became moot when the District Court adjudged Act 115 to be invalid and unenforceable and no appeal was taken from that judgment. If Act 10 incurred a constitutional taint upon the advent of Act 115, it was removed by the eradication of Act 115.

We have not argued here the wisdom or the necessity of Act 10 because those questions are clearly beyond the competence of the courts to review. *Lerner* v. *Casey*, *supra*; *United Public Workers* v. *Mitchell*, *supra*. In the proper exercise of the judicial function, the courts must always abstain from passing on such questions as did the Court in *Atkins* v. *Kansas*, 191 U.S. 207, when, speaking through the earlier Mr. Justice Harlan, it said:

> "So, also, if it be said that a statute like the one before us is mischievous in its tendencies, the answer is that the responsibility therefor rests upon legislators, not upon the courts. No evils arising from such legislation could be more far-reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and, upon grounds merely of justice or reason or wisdom, annul statutes that had received the sanction of the people's representatives."

CONCLUSION

Wherefore, for the reasons hereinabove stated, the judgments of the District Court in No. 14 and of the Supreme Court of Arkansas in No. 83 should be affirmed.

Respectfully submitted,

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October 28, 1960